BURNING THE DOCKYARD: JOHN THE PAINTER AND THE AMERICAN REVOLUTION

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Cover:
Portsmouth Dockyard in the late 18th century. An engraving after John Cleveley, junior.
(Portsmouth Museums & Records Service, 55/1952)

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Burning the Dockyard: John the Painter and the American Revolution

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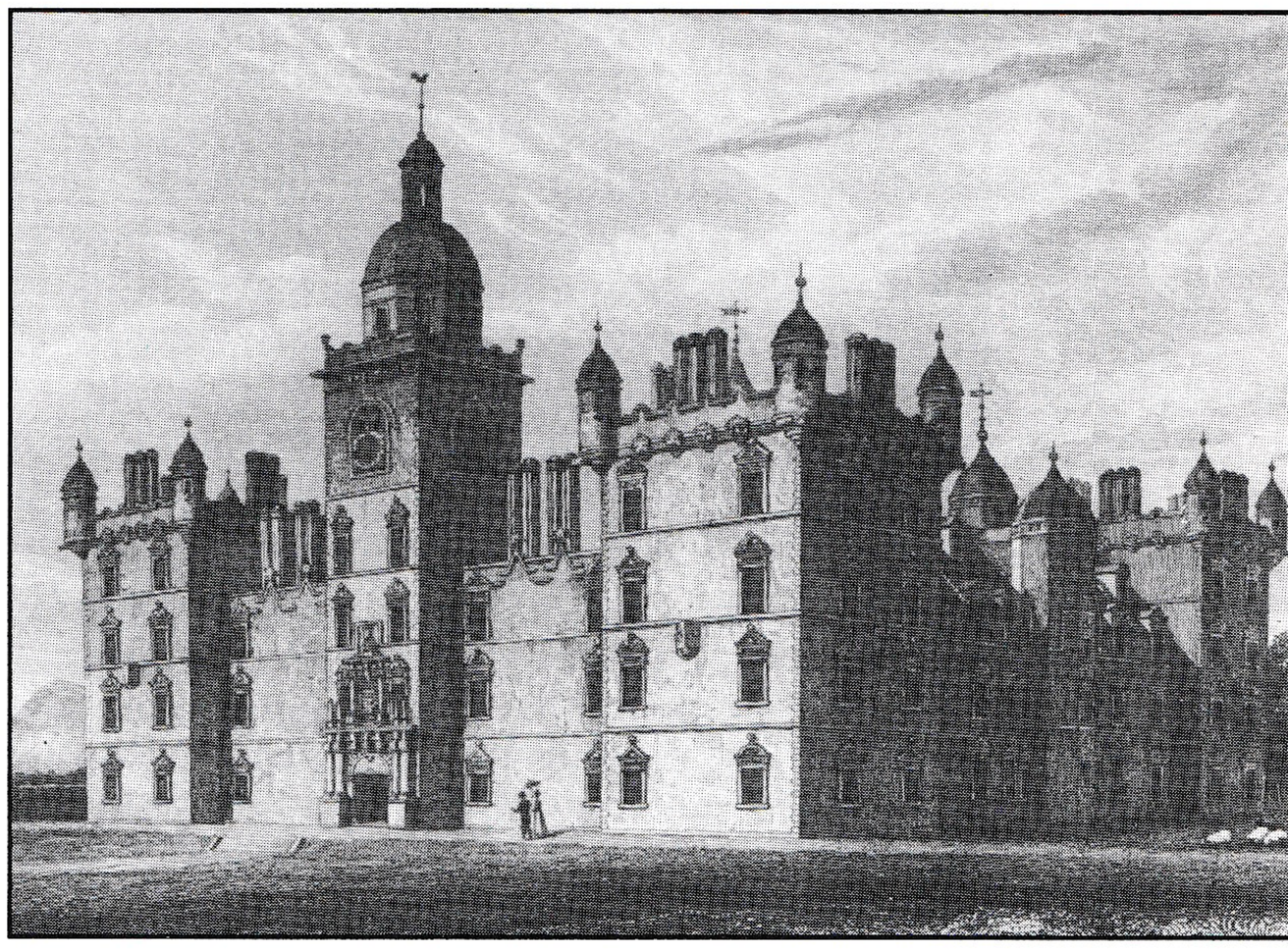


Heriot's Hospital, Edinburgh, where James Aitken entered as a student in 1761 and left in 1767, apprenticed to a local painter. Aitken eventually squandered the opportunities that had been opened to him here, a sad outcome that he only realised in the final hours of his life. The school continues in the traditions of its founder and the original building still stands, seen here from the northwest corner as taken from the Historical and Descriptive Account of George Heriot's Hospital *(Edinburgh: J. Cunningham & J.J. Johnstone, 1827).*

'Jack the Painter' - or, more correctly, 'John the Painter' - is an important part of Portsmouth's folklore. 'John' only became 'Jack' in death, as he was transformed from a figure of fear and loathing into a colourful character. He had been feared with good reason. In December 1776 he tried to burn Portsmouth dockyard, the first step in a master plan to destroy all of the royal yards, force Britain to end its war with the rebellious Americans and allow them to go free. Silas Deane, an American agent in Paris, aided him in this enterprise, a partnership which fed anxieties about larger conspiracies. Before being tried, convicted, hanged and gibbeted in March 1777 'John' had even been implicated in a supposed plot to assassinate George III.

'John the Painter' was born James Aitken on 28 September 1752, in Edinburgh, the eighth of George and Magdalen Aitken's twelve children.[1] The Aitkens lived in Robertson's Close, an alleyway off Cowgate Street, one of the main thoroughfares in the lower town. James's father, a blacksmith and burgess, was well-regarded in his neighbourhood and qualified for an impoverished status that enabled him to send James and three of his other sons to Heriot's Hospital. This boarding school for boys had been founded over a century before by the wealthy, self-made goldsmith George Heriot, who took as his motto *'Impendo'* - meaning that he donated gladly. George Aitken did not live to see James begin his studies. He died in July 1759, just two months before the birth of his last child and nearly two years before James passed through Heriot's portals.[2]

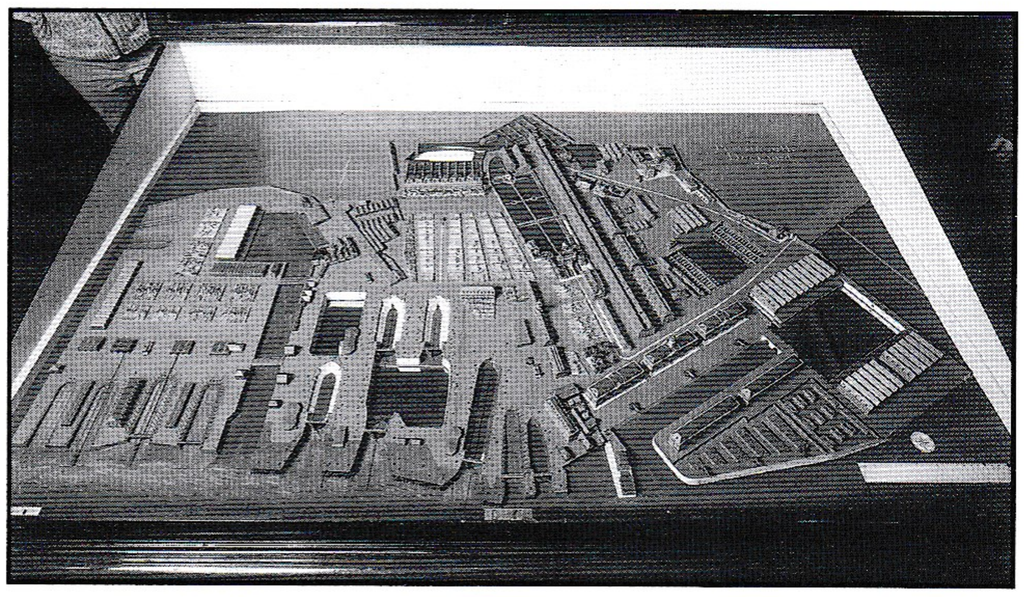
'Honour the Lord with thy riches and with the first of thine increase, so shall thy barnes be filled with abundance', an injunction from Proverbs, was carved into stone facing the school courtyard. It reminded the boys that they should be devout and that they should work honestly and give generously as they made their way up in society. Young James no doubt read those lines and had them reinforced in his lessons. Like many of his classmates he seemed destined for modest success. He entered Heriot's when he was eight and left six years later apprenticed to John Bonnar, a local painter.[3] He completed his seven-year apprenticeship successfully, no doubt a point of pride for his widowed mother, whose own father had also been a house painter. James enjoyed drawing; he also enjoyed reading. According to the not always reliable autobiographical tale that he told after he was sentenced to hang, he most admired writers who 'inveighed at monarchical government'. He wanted to make his mark in the world as something more than a tradesman, a romantic urge to achieve greatness that, combined with republican preferences, could be volatile. Mixed with Aitken's growing restlessness they proved explosive.

> At the expiration of my apprenticeship, having my indentures given me, I set off, with a mind thus prepared, to seek my fortune. I had before lost my father, whose sudden death prevented him from placing me in business under his own eye, as was his original intention. His circumstances were such as could not enable him to make a provision for me equal to the notions I had entertained. I had very early contracted an itch for the service, and notwithstanding the affairs of my father, I had yet hopes of procuring a commission in the land forces. I applied to my mother to assist in importuning my friends and relations to serve me in this particular. - But our endeavours were vain, and I saw the object of my ambition beyond my reach. I therefore, in a fit of resentment, embarked for London with all the monies I could scrape together, not doubting but I should get into some creditable employ before it was all spent.[4]

Only later, as he awaited execution, did Aitken realise that he had thereby begun his slide from working-class respectability into Britain's criminal culture. Venturing to 'the great metropolis' he looked for employment as a painter, found it, but quickly grew bored and fell among 'extravagant young men, by whom I was led into all manner of vice and debauchery'. He spent everything he had and was soon penniless. His new friends drifted away and left him stranded, alone in a 'strange country'. At that point he crossed the line of social acceptability and plunged into a life of crime. Armed with pistols he waylaid a carriage outside London and took what he wanted from its occupants. This, his first attempt at highway robbery, was almost too easy. He continued until he had amassed a 'considerable booty'.[5] His purse full, the extravagant young men welcomed him back. Their vices again became his; his purse soon emptied. He returned to the highway and added shoplifting and other types of theft to his lengthening criminal résumé.

His thirst for adventure unquenched, his pockets once more empty, he decided to try his luck in America. As he told it, he signed an indenture with Captain John Robertson. In exchange for transatlantic passage on board Robertson's ship he promised to reimburse the captain in cash or with his labour after he landed and found work. Upon arrival in Virginia, Robertson sold Aitken's indenture to a local resident. Aitken breached the contract; he never had any intention of honouring it. What he did over the next months is difficult to say. He claimed that he went north and turned up in Boston in time to participate in

A model of Portsmouth dockyard in 1774, one of a series of models of the royal dockyards made for George III and now in the National Maritime Museum, Greenwich.
(Courtesy of and © National Maritime Museum, London, D539-A)



the Tea Party - impossible, because in December 1773 he was still in Edinburgh, apprenticed to John Bonnar. In any event, he had recrossed the Atlantic by the spring of 1775.[6]

Once back in England he resumed his old criminal ways. For over a year he supported himself through burglary and housebreaking. Only occasionally did he seek employment as a house painter. He claimed that he even joined the army a few times, using a false name and staying just long enough to collect his enlistment bonus before deserting. It was while he wandered the countryside in this generally aimless fashion that he experienced a political epiphany, after hearing a conversation in Oxford about dockyards and national security.

> It is amazing with what force this conversation kept possession of my mind. I believe it never left me afterwards. In the night I had a thousand ideas, and all tended to show how important would be the event in favour of America, provided these dock yards and shipping could be destroyed. The more I considered it, the more plausible was the undertaking, and the more eager I found myself to become the instrument of it.
>
> I spent two days in the contemplation of this malicious design, and promised myself immortal honour in the accomplishment of it. I beheld it in the light of a truly heroic enterprise, such as would never have been equalled to the end of time. I was persuaded it would entitle me to the first rank in America, and flattered myself with the ambition of becoming the admiration of the world![7]

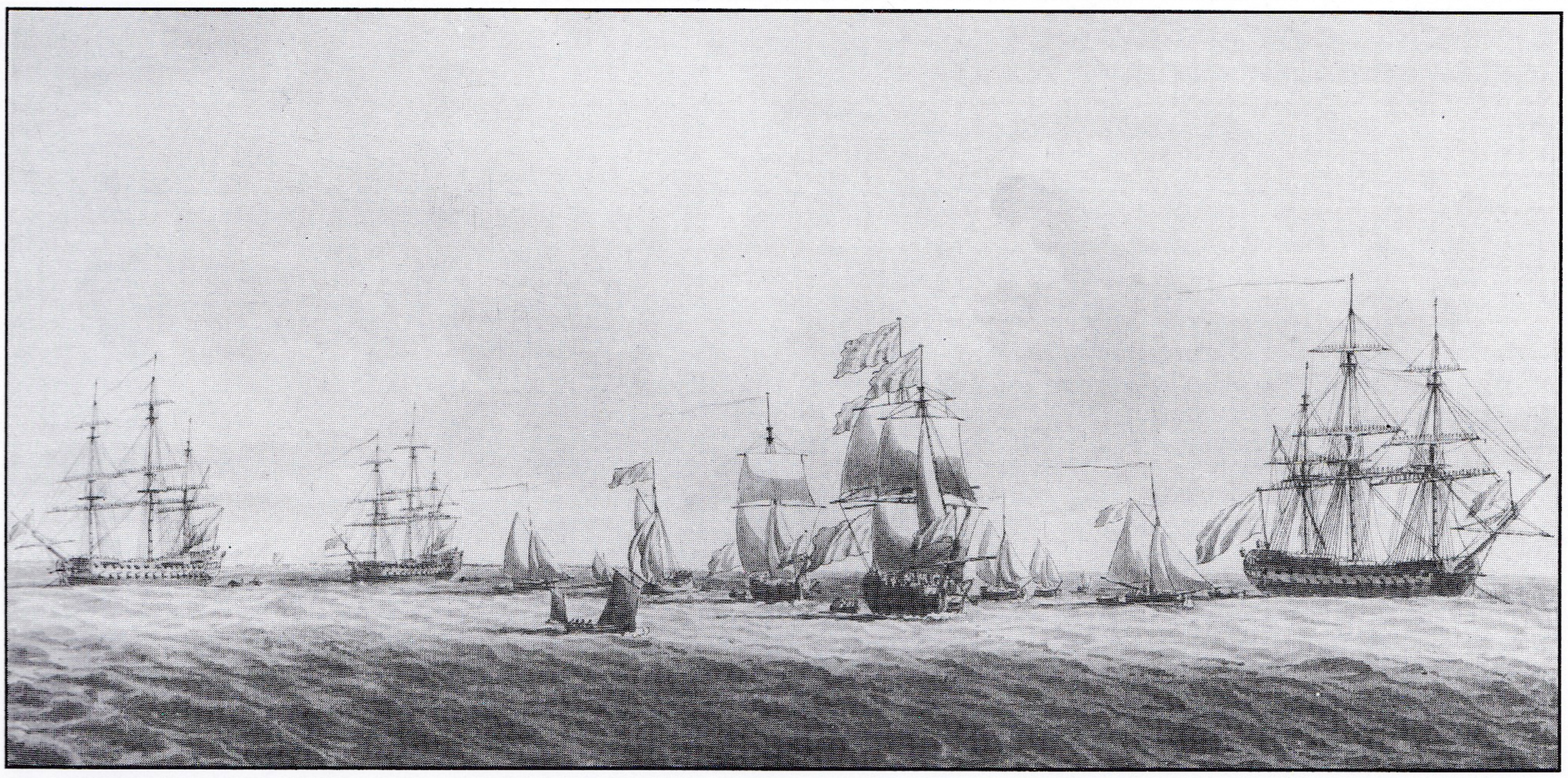
Aitken was not, as some would have it, a madman, nor was his plan impossibly harebrained. The royal dockyards were important military targets and crippling them was one decisive way of weakening the 'wooden walls' of Britain's fleets. There were six yards in all - Deptford and Woolwich on the Thames, Chatham and Sheerness on the Medway, Portsmouth to the south-west of London and Plymouth as the westernmost site. With the silting of the Thames and Medway and strategic emphasis shifting away from the North Sea and Baltic, the east-facing river yards were at a disadvantage. They shrank in importance as Plymouth, the newest location, and Portsmouth, the oldest, grew. Overseas yards could do minor repairs but they could not build, much less refit, ships of the line. War put such heavy demands on the royal yards - demands that increased as the conflict expanded - that private contractors around the country had to take on more of the burden. Some three thousand trees could be consumed in making a seventy-four gun warship, the Royal Navy's mainstay. These and other, larger ships of the line put in for major repairs, on average, once in every five years. Portsmouth and the other yards employed hundreds of skilled craftsmen and gathered huge stockpiles of materials in complex and expensive operations.[8] Thus, to some extent, the Royal Navy's most important actions occurred on land, in the slips and drydocks where construction and repair took place. Failure there could be as disastrous as any lost engagement at sea. Aitken's scheme, even if only partially successful, could jeopardise much.

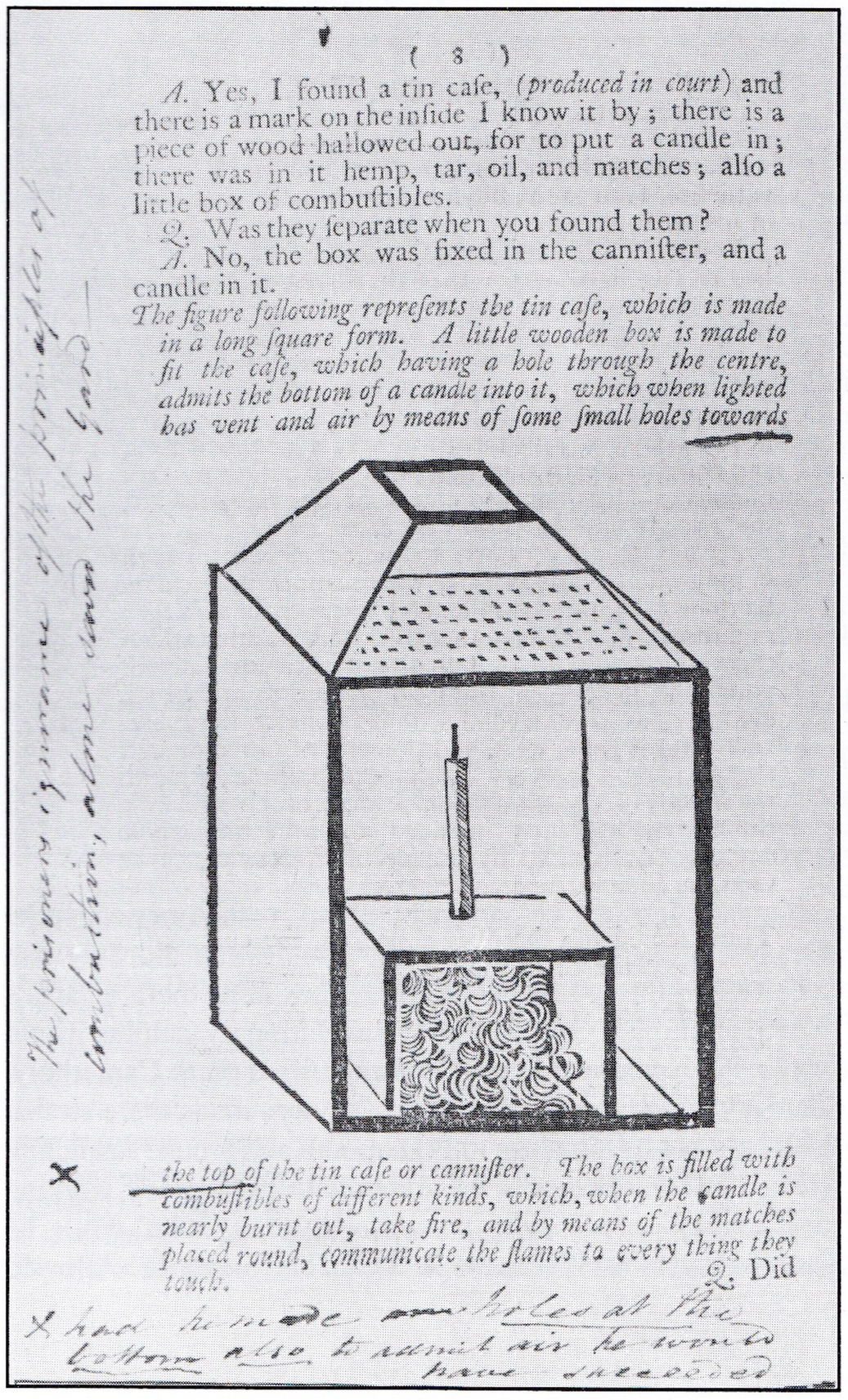
Silas Deane had been sent across the Atlantic by the Continental Congress to secure whatever aid he could from France. His presence in Paris was common knowledge; Aitken crossed the Channel in October 1776 to meet him. Rebuffed by Deane's French servant, Aitken only gained an audience with some difficulty. Deane would later recall that the man standing before him appeared to be about twenty-five, 'of near the middle size for height, but thin, his Countenance rather wild, and at the same time somewhat expressive, his hair deeply inclined to the Red, & his Face covered with red Freckles'. He wore 'a Surtout of a brownish Colour rather inclining to the Claret, which hid his under Cloaths; his hair hung loose on his shoulders, & down his neck before'.[9]

And what did the mysterious stranger propose to do? Nothing less than to destroy all six of the royal dockyards, without being caught, indeed, without even being detected. Eliminate those yards and Britons would lose their confidence and clamour for an end to the war, asserted Deane's visitor. Outrageous, thought Deane, a scheme bordering on lunacy. He raised objections; the stranger countered them. He had gone to every one of the yards and showed Deane drawings he made of each site, detailing the location of storehouses and the lax security that made all of them vulnerable. The stranger assured the still-sceptical American that he had invented a device small enough to fit inside his overcoat that he could use to start fires. He drew Deane a diagram of his 'portable machine', describing it as he went. He began with a bottomless, four-sided tin case, closed at the top but with holes punched for air circulation. Inside would be a candle attached to a hollow wood box acting as the tin case's base. Inside the bottomless box would be 'combustible matter'. With those flammable materials protruding from underneath, the tin case containing the wooden box could be set on the floor of a ropehouse or hemphouse, out of sight and with turpentine, hemp and other ignitable materials gathered close by. The air holes would be so small that virtually no light could escape; the candle would burn so slowly that hours would pass before it reached the wooden box and the flame passed through the hole and into the compartment holding the flammable materials. By then the arsonist would be safely miles away. The case and box could be made of common, inexpensive components by any skilled craftsman. 'Mr Deane expressed his approbation of this contrivance, by saying, that he now believed the scheme was practicable'. Deane asked if he needed any money; he replied that he had enough for the moment and would not request any until he had proved himself

George III reviewing a squadron of the Royal Navy at Spithead, a watercolour by Dominic Serres probably painted in 1773 or 1778.
(Portsmouth Museums & Records Service 724/1979)

John the Painter's incendiary device as depicted in one of the accounts rapidly printed after his trial. From The Life of James Aitken, *published in 1777 in Winchester by J. Wilkes.*
(Portsmouth Museums & Records Service, 108/1963)





(3)

A. Yes, I found a tin caſe, *(produced in court)* and there is a mark on the inſide I know it by; there is a piece of wood hallowed out, for to put a candle in; there was in it hemp, tar, oil, and matches; alſo a little box of combuſtibles.

Q. Was they ſeparate when you found them?

A. No, the box was fixed in the canniſter, and a candle in it.

The figure following repreſents the tin caſe, which is made in a long ſquare form. A little wooden box is made to fit the caſe, which having a hole through the centre, admits the bottom of a candle into it, which when lighted has vent and air by means of ſome ſmall holes towards

the top of the tin caſe or canniſter. The box is filled with combuſtibles of different kinds, which, when the candle is nearly burnt out, take fire, and by means of the matches placed round, communicate the flames to every thing they touch.

Q. Did

by setting his first fire successfully - at the Portsmouth yard, the most important of the six. Deane asked what he wanted as a reward if he succeeded. He responded 'a commission in the American service' and left anything beyond that to Deane.[10]

Deane's concerns centred on the danger of detection and exposure, not the morality or immorality of his visitor's proposal. Deane worried that 'should it come out that America was privy to it' the arsonist's actions would do more harm than good, especially if he failed, was caught, and revealed Deane's involvement.[11] Quite possibly Deane had already decided to distance himself if the plan failed and opt for what has become known in this age as 'plausible deniability'. If by chance Aitken, who told Deane his name before they parted, did succeed, the course of the war might be altered and Deane would be congratulated by friends back home as a hero in the quest for independence. Deane knew that the Continental Congress was going to seek a formal alliance with France. Frustrated by his middling success to that point, feeling that Congress kept him in the dark, he had every reason to suspect that treaty negotiations would not be left to him. Unbeknown to Deane, Benjamin Franklin was already on his way to France for just that purpose. Deane did not want to be nudged aside. An ambitious politico who dabbled in stocks and played fast and loose with congressional accounts, the temptation to back his enigmatic caller proved irresistible.

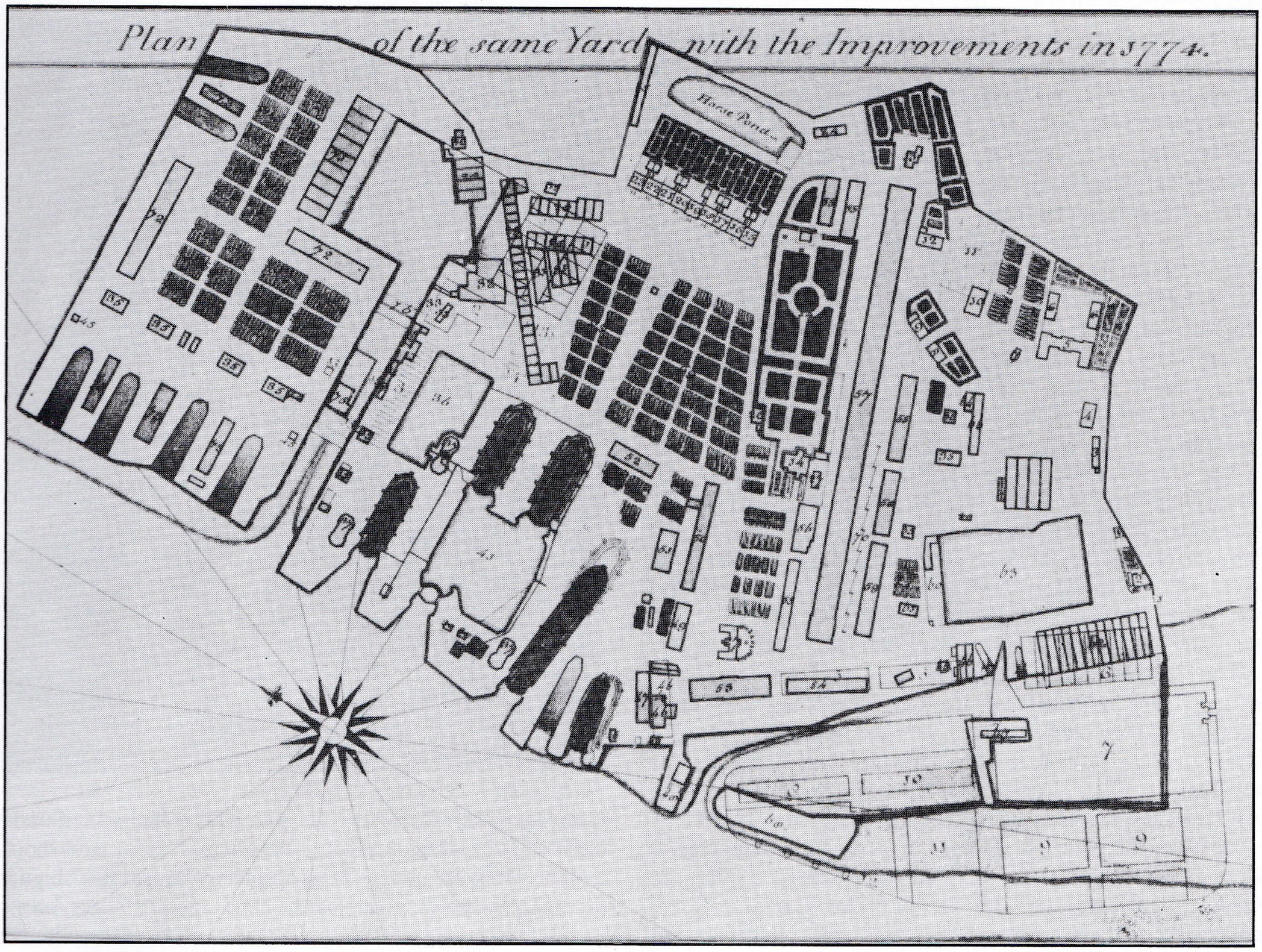
Sending Aitken to Calais, Deane cautioned him to use the utmost secrecy because 'by one inadvertent step, perhaps the whole undertaking may be frustrated'. He told the agent-arsonist to go to London after lighting his first fire at Portsmouth. There he would meet an unnamed 'friend' in whom he could confide, a contact who could be relied on 'to advance such sums' as he would need. Then he had to press on to the other targets 'with the care and deliberate sagacity which so great an

Portsmouth Harbour in 1750, by J.P. Desmaretz, with Fort Blockhouse in the lower centre, the town of Portsmouth in the lower right, and the dockyard - separated from the town by the Common, now known as Portsea - in the centre.
(By permission of the British Library, Maps K. Top.XIV.30)

enterprise required' and 'endeavour to complete a total destruction'. After that he should return to France where, Aitken claimed, Deane promised he would 'meet with every reward which the greatness' of his service could lead him to expect.[12]

Elated, Aitken recrossed the Channel, carrying £3 for travel expenses as a gift from Deane, directions to Deane's unidentified friend in London and, apparently, a safe conduct pass carrying a slight variation on his name and signed by the Comte de Vergennes, the French foreign minister. Aitken probably little appreciated or understood the complex world of diplomatic intrigue he had just entered, with Americans like Deane angling for more than the clandestine aid they had received to this point, while Vergennes kept them at arm's length, waiting to see how their revolutionary gambit would play out. Landing at Dover, Aitken hurried on to Canterbury. He decided to have his fire-setting devices made there so that he would not be too close to Portsmouth and arouse suspicion. He had spent some time in the Portsmouth area already, working in Titchfield as a painter known simply as 'John' while he familiarised himself with the dockyard between jobs. Allowed

Portsmouth yard in 1774, showing the slips, docks and timber berths as well as the mast pond (63) and buildings. The rope house (57) runs nearly the width of the yard. Aitken set this building and the hemphouse (55) to the south of it alight. The commissioner's house (14), on the other side of the ropehouse, just west of the garden was virtually untouched.
(By permission of the British Library, King's MS 44.f.7)



access by inattentive watchmen, he inspected storehouses, studied operations, and made sketches.

Aitken did not move hastily. He waited until 6 December, a Friday, to rent a room in Portsmouth and then enter the by now familiar yard. Slipping in among bales in a hemphouse, he set one of his canisters in position. He afterwards crossed over to the ropehouse. Instead of placing another canister he laid out a slow-burning 'match' of his own design, made of paper and coated with charcoal and gunpowder. The match led to hemp stuffed into the top of a turpentine-filled bottle placed on its side. Tarrying too long but still unseen, he was locked in the building by departing workers. He pounded on a door until someone came. Explaining that he had wandered inside to satisfy his curiosity and lost track of time, he was allowed to leave. He returned to his rented room in Portsmouth that night and the next morning found new lodgings on the Common - the future town of Portsea - closer to the yard. He planned to return there for his possessions and set a diversionary fire after he had completed his mission at the yard. He rented still another room with the intention of setting a fire there too.

The next afternoon, 7 December, he went to the hemphouse to light the candle in the canister. His matches were damp; not one would ignite. Frustrated, he gave up, left the yard to buy more and re-entered, this time going to the ropehouse. He lit the gunpowder-and-charcoal-treated paper and rushed out. Giving up any thought of trying to light the canister in the hemphouse or of retrieving his bundle or setting the other two fires, he hopped on a cart leaving the Common. After a couple of miles he went ahead on foot, crossed the bridge to the mainland and 'looked back, and saw flames'.[13]

Anxious workers informed James Gambier, Navy Board member and resident commissioner, of a fire in the ropehouse at roughly half-past four. All but two of the men employed there - Richard Noke, a carpenter, and rope spinner Richard Faithfull, in charge of locking the building and making sure that it was empty - had left nearly two hours before. Coming down from the top floor of the 1,100ft-long, three-storey-tall building, they smelled smoke on the middle floor, where hemp was spun into yarn. Faithfull hurried to the bottom floor and out of the east door to sound the alarm. Noke stayed to retrieve his tools and was almost trapped by the rapidly-spreading flames. He escaped when someone placed a ladder at one of the middle floor windows.[14]

Gambier sprang into action; fire posed the yard's greatest

John Montagu (1718-1792) 4th Earl of Sandwich, at Greenwich Hospital, *by Thomas Gainsborough. Sandwich was First Lord of the Admiralty in 1748-51, 1763 and 1771-82.*
(Courtesy of and © National Maritime Museum, London, BHC 3009)

danger. It had already suffered two serious fires in living memory, the first in 1760 that was apparently caused by lightning, the second in 1770 when arson was suspected but never proved. That more recent blaze had raged out of control for hours and caused nearly £150,000 in damage. As part of the rebuilding programme a new brick ropehouse was constructed to replace the lost wooden structures, the very place where this new fire erupted.

Hundreds of men converged on the ropehouse to fight the fire, including marines from the garrison, soldiers stationed at the gun wharf, workers still in the yard, and even sailors from ships in the harbour. Gambier dashed off a dispatch to London, reporting that 'the whole Ropehouse is entirely destroyed' as flames lit the darkening sky. The conflagration proved 'so amazingly violent and quick that it was impossible to save that Building'.[15]

The quick reactions of Richard Faithfull may have saved a small hemphouse just thirty feet to the north of the ropehouse's east end. Flames had leapt from the roof of the ropehouse and burned into the hemphouse's hatchelling loft. Finding the ground floor locked, Faithfull prised open a window. He and two ropemakers crawled through and went up to the loft, saw the flames, tried and failed to close the iron door securing the loft and headed back downstairs for help. No key to the outside door could be found in the confusion, so a shipwright smashed it open. Others pitched in and with their help they wheeled over a pump and ran a hose upstairs, which one of the ropemakers 'played very briskly upon the fire in the Loft by which means, it was in a short time, entirely extinguished'.[16]

In the meantime most of the cordage stacked on the ground floor of the ropehouse had been safely removed. By 10 p.m. Gambier was able to send a second dispatch, reassuring his colleagues on the Navy Board that the fire had been contained and 'the loss is not so considerable as to affect the present equipment'. To guard against flare-ups and to keep the site secure, Gambier posted fifty marines around the smouldering ruin. In another dispatch the next morning he concluded that they had been 'very fortunate', if the flames had spread to neighbouring buildings 'there would have been no putting a stop to the General Conflagration'. There had been but a slight wind and the ropehouse roof fell straight down, within the brick walls, thereby containing the blaze.[17] A relieved Gambier could be fairly certain that the fire started after 4 p.m. because a clerk had passed through the ropehouse then and smelled nothing. But he could not say 'whether it happened by Accident, or was by design'.[18]

Ultimately this latest fire would prove far less destructive than the 1770 outbreak. But for the moment near-panic reigned. Newspaper coverage emphasised, even exaggerated, the danger that the fire had posed. One report noted that a brig loaded with 2,000 barrels of gunpowder and anchored in the harbour was moved to safety only because of high tide and sailors manning the oars of smaller boats who towed the ship away. If that vessel had caught fire and exploded, it stressed, the whole yard, possibly even the whole town, could have been flattened.[19]

Gambier was level-headed enough to know that had been a remote possibility. He also understood that he had suffered a close call. In addition to all of the hemp, timber, workshops, and tools that might have been destroyed, he had five ships in drydock for repairs, including the eighty-gun *Princess Amelia* and the sixty-four-gun *Europe*. Moreover, the ninety-gun *St George*, the seventy-four-gun *Warrior* and three other warships sat on slips in various stages of construction. All of them might conceivably have been lost.[20]

The public was fascinated. Even George III followed developments closely. He read the first dispatch that Gambier sent to the Navy Board, the transport officer from the yard who carried it the seventy miles to London delivering it to Kew after showing it to board members. The king offered the Earl of Sandwich, First Lord of the Admiralty, his own theory for the fire's cause: someone who went to pilfer took along a lantern that inadvertently 'occasioned the conflagration'.[21] The king remembered fondly his state visit to Portsmouth just three years earlier. He had reviewed the fleet at Spithead and performed the expected ceremonial duties in town and at the dockyard - where the workers, 'having green boughs in their hats, and appearing at a distance like a walking wood', formed lines and 'gave him three hearty cheers on his approach'.[22] He spent his nights in the commissioner's house, less than one hundred feet from the now gutted ropehouse.

Gambier was under intense pressure to find an answer, and soon. Navy Board comptroller Maurice Suckling and board member Timothy Brett arrived at the yard within forty-eight hours of the fire to join in the investigation. Together they

Plymouth dockyard about 1800, a detail from an oil painting by Nicholas Pocock.
(Courtesy of and © National Maritime Museum, London, BHC 1914)

sifted through the debris and conducted interviews, assisted by a solicitor from Titchfield named Missing. The question running through all their minds: had this been an act of arson? But their flurry of activity produced seemingly little, except for one possible lead. Gambier learned that a painter named John known to have worked in and around Titchfield was seen lurking about the dockyard on the day of the fire. In fact, he had been found locked in the ropehouse the evening before and had to be let out. No one sought to detain him; no one reported the incident to Gambier.

With Missing, the solicitor, as guide, the commissioner sent people to Titchfield to make inquiries. They learned that a painter calling himself John had indeed been there, first turning up in January and returning in July. Two men in town who had hired this John called him an American 'with a great impediment in his Speech', perhaps because he tried to mask his Scottish burr. [23] One went further, characterising him as a 'Maccaroni Painter' because his attempts to dress stylishly only made him look odd. His hair was 'clubbed', he wore a cocked hat 'and appeared for his occupation above the common degree'. The physical description was a bit vague: 'a thin man, with light Hair, about 25 or 26 Years of Age'.[24] A local carpenter added that the suspect was 'about 5 feet 7 inches high'. But neither he nor anyone else had seen John since the summer and 'no person knows whither he went, or what Road he took'.[25] With that the promising trail appeared to be a dead end, at least for the moment.

Meanwhile Aitken had made his way to London and contacted Deane's friend, who he finally learned was Dr Edward Bancroft. He and Bancroft met twice; neither visit went well. He told Bancroft what he had done in Portsmouth; the doctor did not encourage him at all and denied having been told anything of Aitken's mission by Deane. Angry that Bancroft remained aloof, Aitken rebuked him as no friend to Deane and boasted rashly that the doctor would 'hear more' of his 'works at Plymouth'.[26] The next day, his resentment subsiding, Aitken wrote to Bancroft and asked that he did not disclose what he had been told, 'as it would greatly injure his friend Mr Silas Deane and the cause of America, and do him no service'.[27] If, as Aitken thought, Bancroft did keep what he knew to himself, he did not guess the doctor's motives - a spy hoping to avoid exposure, even if it meant allowing an arsonist to move on to his next target, without sounding an alarm.

Edward Bancroft was actually a double agent, an opportunist who played both ends against the middle. A native of Massachusetts, he had known Deane from his days in Connecticut. He left the colonies to make his way in the wider world. Moving to Surinam he all but taught himself natural history and medicine. By the Revolutionary Era he had established himself in London as a respectable citizen with a modest medical practice. His degree from the University of Aberdeen gave him a professional cachet; his *Essays on the Natural History of Guiana* brought him stature as a man of science and election into the Royal Society. Entering the imperial dispute in 1769, he wrote for the Patriot side and impressed Benjamin Franklin, then living in London as a lobbyist. Franklin urged Deane to contact Bancroft when he arrived in France in the spring of 1776; Deane did as Franklin urged.

Deane did not realise - ever, as it turned out - that Bancroft had been recruited as a British spy. Whenever Bancroft visited Deane in France he reported what he had seen and heard to another American expatriate, Paul Wentworth, who passed that

Arson discovered, a report in the Hampshire Chronicle *of 18 January 1777.*
(Courtesy of the *Hampshire Chronicle*)

A perspective view of the Draw-bridge, Quay & Clare Street, Bristol, about 1776.
(Courtesy of Bristol Museums and Art Gallery)

PORTSMOUTH, SATURDAY, *Jan.* 18.

Monday was married, the Rev. Mr. Thomas, curate of this church, to Miſs Ackman, of Alresford.

Monday laſt died, aged 57, Mr. James Deacon, late an eminent wine merchant in this town.

On Wedneſday was found in the hemp-houſe belonging to the dock-yard, (in which is depoſited ſeveral hundred tons of hemp) a piece of wood about a foot long, hollowed out and filled with gunpowder, with a tin box at the end about the ſize of a pound cannilter, filled with combuſtibles, and the top punched full of holes; it was found under a large body of hemp, and appeared to have been ſet on fire, but had not the effect the perpetrator intended; which, it is ſuppoſed, was to have ſet that room on fire at the time the rope-houſe was. From the above circumſtances, there cannot remain a doubt but the different fires which have happened in the dock-yard were done by deſign, and not by accident. The box was on Thurſday ſent up to the Admiralty.

information to William Eden, head of the government's rudimentary intelligence-gathering service.[28] Thick in double-dealing, Bancroft neither helped Aitken nor told the authorities of the arsonist's visit.

Aitken travelled west, trying - and failing - to set fire to the royal dockyard at Plymouth. Having read newspaper accounts he realised 'that the damage at Portsmouth had not answered my expectation'. Escaping Plymouth without detection, he then made for Bristol, which he had scouted before his Plymouth escapade, this time to try his hand at firesetting on merchantmen and in warehouses. He made numerous attempts, the most notable coming on the night and early morning of 15-16 January, and then again three nights later. He damaged a few ships and a warehouse in the first attempt; the second proved far more successful and Aitken's fires damaged considerably more private property in Bristol than what he had managed to achieve at the Portsmouth yard. Though the fires put 'the whole city in consternation', Aitken felt that he had not accomplished enough. Still, it was too dangerous to attempt anything more so he decided to make his way back to the south-east, return to France and report Bancroft's duplicity as well as his own exploits to Deane.[29] He never got to the Channel.

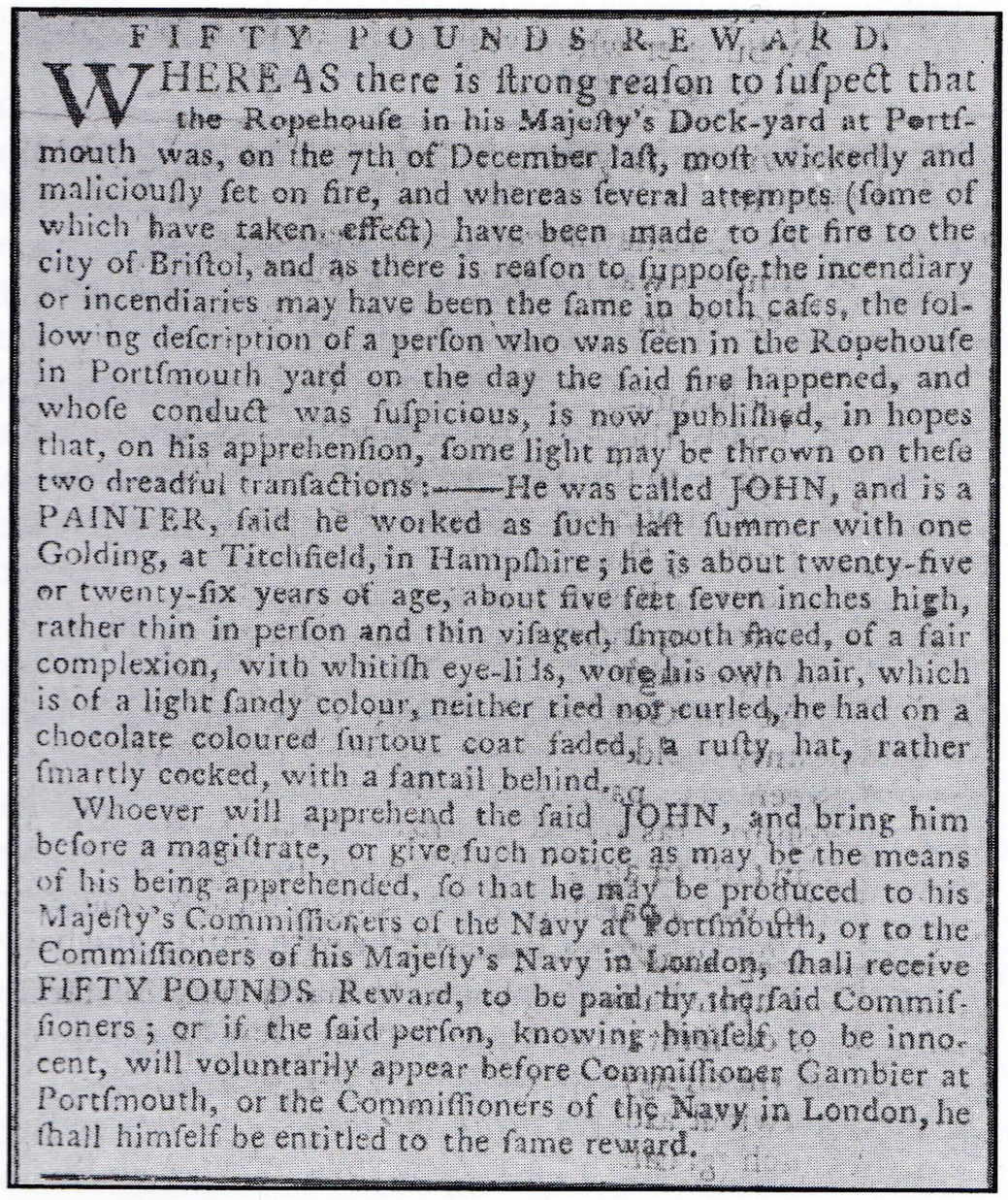
The same day that Aitken set his first fires in Bristol, investigators in Portsmouth made a crucial discovery. One of Gambier's clerks found a tin case full of combustibles in the hemphouse just south of the charred ropehouse's midsection. The suspicious-looking container had been hidden among some hemp bundles, covered with loose strands to conceal it. Perforated at the top, it held a candle inside that passed through a wooden box. Inside the box were turpentine-soaked flammables and matches lay scattered about the floor. Gambier sent the case to London for the Navy Board and Admiralty to inspect. George III asked to see it, too. He spoke for all when he told Sandwich 'I am very sorry to find that there is too much reason now to apprehend that the fire at Portsmouth was occasioned by malice'.[30] The press, which had lost interest in events at Portsmouth, returned to the subject zealously. Newspapers and magazines reported the discovery of the tin case and printed various renderings of it, with explanations of how it was supposed to have worked. They all made the same point: that the tin case was an arsonist's tool, designed to start a fire undetected, allowing the perpetrator to slip away without being caught. One letter from Portsmouth published in a popular magazine reflected the growing concern:

> This discovery may tend to convince the public, that the three late fires in the Dockyard, which by many were imputed to accident, were perpetrated by some incendiaries. It is to be hoped that such measures will now be taken as may effectually prevent these great calamities in future, and that such enquiries will be made as may lead to conviction and punishment of the offenders. If this contrivance had taken place, it would have happened at a period when many persons are inclined to think we are on the eve of a foreign war; and so considerable is the present stock of hemp, that if the discovery had not been timely made the consequences might have been very fatal.[31]

The Bristol outbreaks deepened public dread. The arson there was obvious. Fearful merchants combined resources to offer a reward of £500 to anyone whose information led to trial and conviction. George III pledged œ1,000 to the fund and promised to pardon any accomplice who stepped forward and identified the actual arsonist or arsonists.[32] With the bits and pieces of information coming in from Portsmouth and Bristol the Navy Board decided to run advertisements in newspapers throughout southern England, making 'John the Painter' the chief suspect in all these fires and offering a £50 reward to anyone who apprehended him. Sandwich and the other Admiralty lords added to the incentives by increasing the reward to £1,000. The man they wanted:

> appeared to be about 25 or 26 Years of Age, is about five Feet seven Inches high, his Complexion fair, with a smooth Face, and whitish Eyelids; said to have a Sort of Stammering in his Speech; had his own Hair, of a light sandy Colour,

Adverts for the capture of John the Painter were placed by the Navy Board in a number of national and local newspapers in January 1777. This one is from the Hampshire Chronicle *of 27 January.*
(Courtesy of the *Hampshire Chronicle*)



FIFTY POUNDS REWARD.

WHEREAS there is ſtrong reaſon to ſuſpect that the Ropehouſe in his Majeſty's Dock-yard at Portſmouth was, on the 7th of December laſt, moſt wickedly and maliciouſly ſet on fire, and whereas ſeveral attempts (ſome of which have taken effect) have been made to ſet fire to the city of Briſtol, and as there is reaſon to ſuppoſe the incendiary or incendiaries may have been the ſame in both caſes, the following deſcription of a perſon who was ſeen in the Ropehouſe in Portſmouth yard on the day the ſaid fire happened, and whoſe conduct was ſuſpicious, is now publiſhed, in hopes that, on his apprehenſion, ſome light may be thrown on theſe two dreadful tranſactions:——He was called JOHN, and is a PAINTER, ſaid he worked as ſuch laſt ſummer with one Golding, at Titchfield, in Hampſhire; he is about twenty-five or twenty-ſix years of age, about five feet ſeven inches high, rather thin in perſon and thin viſaged, ſmooth faced, of a fair complexion, with whitiſh eye-lids, wore his own hair, which is of a light ſandy colour, neither tied nor curled, he had on a chocolate coloured ſurtout coat faded, a ruſty hat, rather ſmartly cocked, with a ſantail behind.

Whoever will apprehend the ſaid JOHN, and bring him before a magiſtrate, or give ſuch notice as may be the means of his being apprehended, ſo that he may be produced to his Majeſty's Commiſſioners of the Navy at Portſmouth, or to the Commiſſioners of his Majeſty's Navy in London, ſhall receive FIFTY POUNDS Reward, to be paid by the ſaid Commiſſioners; or if the ſaid perſon, knowing himſelf to be innocent, will voluntarily appear before Commiſſioner Gambier at Portſmouth, or the Commiſſioners of the Navy in London, he ſhall himſelf be entitled to the ſame reward.

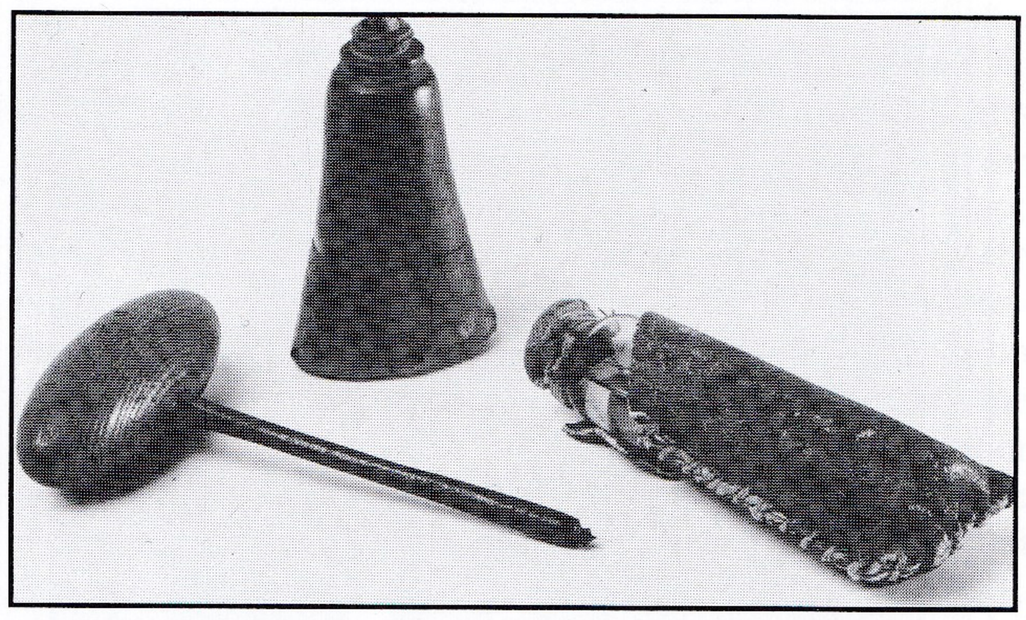
neither tied up or curled; thinnish in Body, and thin faced. He had a Surtout Coat, Chocolate coloured, but faded; his Hat smartly cocked, with a Fan-tailed Flap.[33]

The Navy Board and Admiralty hoped to tap into an informal crime-detecting network created by London magistrates Henry and John Fielding twenty years before. Their 'Hue and Cry' notices placed in newspapers around the country had accustomed readers to look for suspects.[34] With descriptions of 'John the Painter' appearing alongside promised rewards there was always the chance that something would turn up. The very wording of the notices showed how desperate the authorities had become. They had a name but it was incomplete and perhaps fictitious, they had a description that could match thousands of men in England, and no fresh leads. They did not even know if they were looking for one arsonist or a whole gang. All they could do was hope and wait.

As luck would have it, they did not wait long. On 28 January the Navy Board received a brief note from one James Lowe of Calne, in Wiltshire. Whoever opened the letter and read it must have been dumbstruck.

> On Monday the 27 instant, I lodged in Odiham Jail near Basingstoke Hampshire a Man for Housebreaking which answers to an Advertisement in the news Papers relative to a man setting Fire to the Ropehouse in his Majesty's Dock Yard at Portsmouth, the said man answers the description in every respect. I found on him a loaded Pistol with Shot, a Tinderbox Pistol, a Vial Bottle of spirits of Turpentine, a bundle of Matches dipped in Brimstone and a Box of exceeding fine Tinder made of Silk.[35]

Aitken's gimlet, powder flask and bottle of turpentine, taken from him by his captor, Dalby, the keeper of the Andover bridewell, and now in the City Museum & Records Office, Portsmouth.
(Portsmouth Museums & Records Service, 107/1963a, b, d)

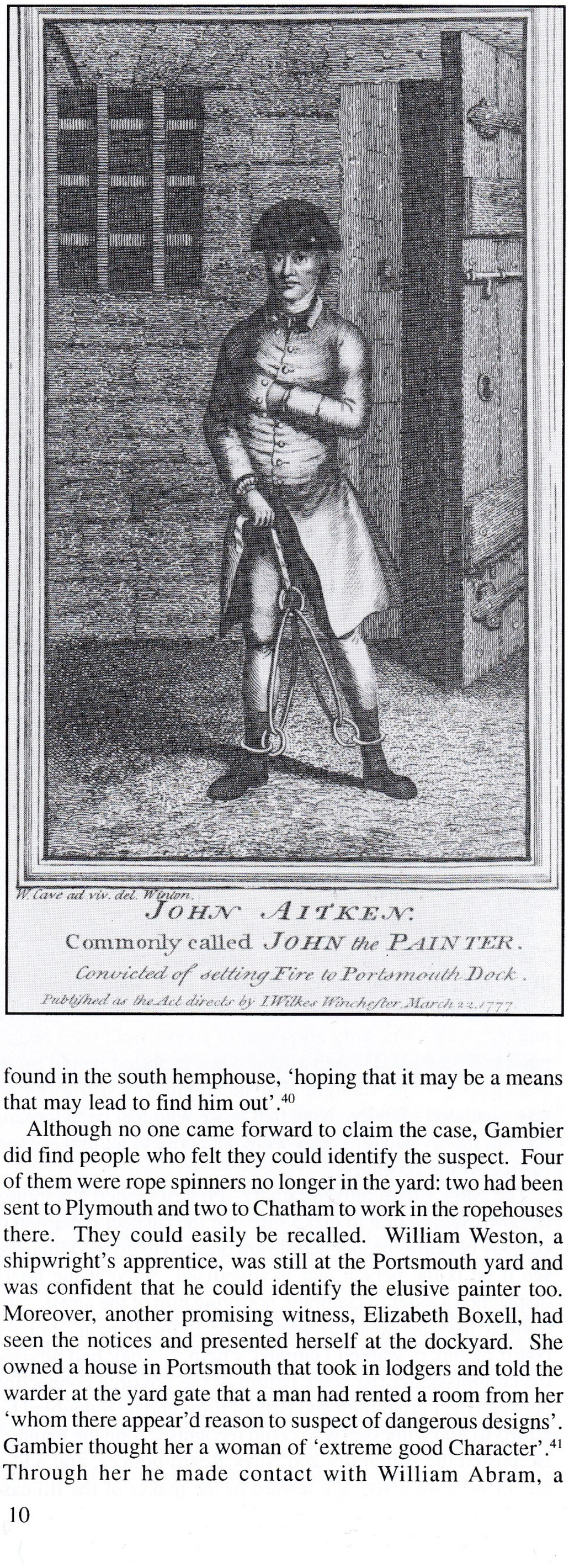


Lowe was not aware that he had done what the Navy Board, Admiralty and even the king himself had been wishing for until after he did it. His wife remembered a man loitering outside the shop attached to their house the day before it was robbed, told her husband what he looked like, and the irate linen draper took off in pursuit. He tracked his quarry by asking people he encountered if they remembered seeing the man he described. Meanwhile John Dalby, keeper of the bridewell in Andover, a Hampshire town thirty miles to the south-east, had read the Navy Board notice and began asking his neighbours if they had seen anyone matching the description. At least one among them had and Dalby went east, in the direction the suspect was seen walking. He caught up with him in Hook, near Odiham. Lowe arrived not long after. Together they took him to the local justice of the peace, who placed him in the custody of the Odiham gaol keeper on suspicion of burglary.[36] Lowe then sent his letter to London.

Though a small town, Odiham had a relatively new gaol. The keeper lived in the front part, which was separated from the back by a walled-in courtyard. Cells, one for men, one for women, were located in the rear, as was a prisoner's day room. The gaol often stood empty; rarely were there more than two or three inmates. Chances are that Aitken was alone in his cell. His bed would have been bare wood slats unless he could pay for straw. His daily allotment of food would have been a pound of bread.[37] Though armed when captured he put up no resistance. If he thought that he might yet slip away he miscalculated - fatally. Now that those who had been looking for him finally had him, they were not about to let him escape. Justice would be theirs.

The Navy Board moved rapidly. First, it rushed a response to Lowe, telling him to make sure that the suspect remained in custody because 'proper people are ordered to go to Odiham to see if he is the person that is advertised'.[38] Next the board dispatched a letter to Gambier, notifying him of the arrest. 'We think it may be doubtful whether he is the Person', but the board members wanted Gambier's help.[39] They had advised the commissioner the week before of the possible connection between the Portsmouth and Bristol fires, and he redoubled his efforts to find witnesses who could recognise 'John the Painter'. He posted the Admiralty and Navy Board notices, and added one of his own offering a reward to the maker of the tin case

Aitken, here sloppily called John instead of James, is depicted as striking a rather jaunty pose, before the trial had started, when he may have thought that he would escape hanging. From The Life of James Aitken, *published in 1777 in Winchester by J. Wilkes.*
(Courtesy of Hampshire Record Office and the Jervoise of Herriard Collection)



found in the south hemphouse, 'hoping that it may be a means that may lead to find him out'.[40]

Although no one came forward to claim the case, Gambier did find people who felt they could identify the suspect. Four of them were rope spinners no longer in the yard: two had been sent to Plymouth and two to Chatham to work in the ropehouses there. They could easily be recalled. William Weston, a shipwright's apprentice, was still at the Portsmouth yard and was confident that he could identify the elusive painter too. Moreover, another promising witness, Elizabeth Boxell, had seen the notices and presented herself at the dockyard. She owned a house in Portsmouth that took in lodgers and told the warder at the yard gate that a man had rented a room from her 'whom there appear'd reason to suspect of dangerous designs'. Gambier thought her a woman of 'extreme good Character'.[41] Through her he made contact with William Abram, a Portsmouth blacksmith who boarded at the house and felt that he also could identify the suspect.

All three prospective witnesses were swept up in the accelerating investigation. At the Navy Board's direction Gambier put Weston and Abram in a post-chaise that sped them to Odiham. They were to see if the man held there was indeed 'John the Painter'. If they were sure he was, they were to proceed to London, not return to Portsmouth. Within three days of Gambier's receiving the Navy Board's note about the arrest, all had been accomplished. Weston and Abram went to Odiham, identified the suspect and headed for London. As soon as the board heard that, instructions went out to Gambier to send Mrs Boxell and Mr Golding, a Titchfield painter, to London 'to attend us'.[42]

The man identified as 'John the Painter' was taken from Odiham to London to be examined by Bow Street magistrates, with Sir John Fielding heading the proceedings. Fielding's court was already involved in the case. The Navy Board had released its original notice after Bow Street issued an arrest warrant based on the court's impression that there was sufficient evidence to bring a grand jury indictment. Rather than leave the suspect in Odiham to be prosecuted for the burglary of James Lowe's shop, the government wanted to transfer him to London and then decide how to proceed.

The suspect proved most uncooperative. He was brought before Fielding on 4 February for the first of numerous examinations - preliminary inquiries to determine whether he should be bound over for formal indictment and subsequent trial. Displaying what observers for the press called 'a sullen attitude' and a 'determination of mind begot by strong enthusiasm', he either refused to respond or gave evasive answers.[43] Fielding did not conduct these inquiries alone; at least twice some Admiralty lords, Sandwich included, joined him and other magistrates on the bench. William Weston and Mrs Boxell from Portsmouth and Mr Golding from Titchfield filed in, along with various witnesses from Bristol, to identify the man standing in the dock before them. Witnesses from Portsmouth testified that he was 'John the Painter', those who came in from Bristol said that he was known to them as 'James Hill', others who travelled from Exeter and even Gloucester remembered him as 'James Hind'. He denied knowing any of them. The tinder box, matches and flammable materials found on him at Odiham were introduced as evidence, as was the tin case found in the Portsmouth yard, which Mrs Boxell swore that she saw in the room she let to the accused. He ignored it all as irrelevant. Asked if he had ever been to America, he remained silent. Most often he gave a terse 'I don't chuse to answer' to the questions put to him. If he said more it was only to assert his poverty and protest his ignorance of the law. When Fielding asked him if he wanted legal counsel he said yes. When Fielding then asked if he had anyone in mind he said wryly, 'the best'.[44] That he denied everything and admitted nothing added to the intrigue and speculation in the press. Some were sure that he was a Scot; others thought his burr a speech impediment. Some thought him to be in his twenties; some thought him to be thirty.

And so it went at Bow Street for three full weeks. Fielding thrust as his opponent parried. But Fielding knew precisely what he was doing. He was playing for time and he was trying to wear the prisoner down so that he could get what he wanted by a more indirect route. He seemed to be repeating himself in court, even running in verbal circles; no matter. The real struggle took place where the accused was confined between examinations, in the 'new prison' at Clerkenwell.

The Clerkenwell facility was indeed new, just two years old, but it was essentially a larger version of what the prisoner had already experienced at Odiham. He slept in the same sort of cell, on the same strawless mattress, and ate the same kind of bread. He was charged for that poor bed and meagre diet and would have had to pay more for anything better. At night the prisoners slept in 'dormitories'; during the day, when they were not exercising in the prison yard or receiving visitors, they were placed in solitary cells 'intended to awaken' their 'hearts and understanding'. Supposedly this technique was a success and many of the 'unruly apprentices, turbulent persons, and culprits guilty of petty crimes' developed a 'due sense' of their guilt, changed their ways, and were 'by this means restored, in an humbled state, to God and their country'.[45] Perhaps, but Fielding could guess that this approach would not work with 'John the Painter'. Nor was torture an option. Fielding, his astuteness more than compensating for his having lost his sight many years before, would have to be more imaginative, more subtle to succeed. And he was.

During one of the early examinations in Bow Street a housepainter named John Baldwin was brought into the courtroom to see the prisoner. Fielding asked Baldwin if he had ever been to America and Baldwin replied, yes, he had lived in New York, Amboy, and Philadelphia. Fielding then asked him if he had ever seen the prisoner before; Baldwin said no. At that point the prisoner made a slight bow in Baldwin's direction. Later, as Baldwin was signing his deposition and preparing to leave, the prisoner signalled with a nod that he wanted to talk with him and they engaged in a friendly conversation.[46] The prisoner invited Baldwin to visit him at Clerkenwell, which Baldwin did. For the first week they talked about safe subjects but by the second the prisoner had begun to confide in Baldwin and told him secrets that he withheld from Fielding, secrets about the fires he had set. He did not tell Baldwin his real name but he revealed more than enough to put his head in a noose. Foolishly dropping his guard, Aitken had felt that here was someone he could trust, a fellow painter, an honest man who shared his American sympathies.

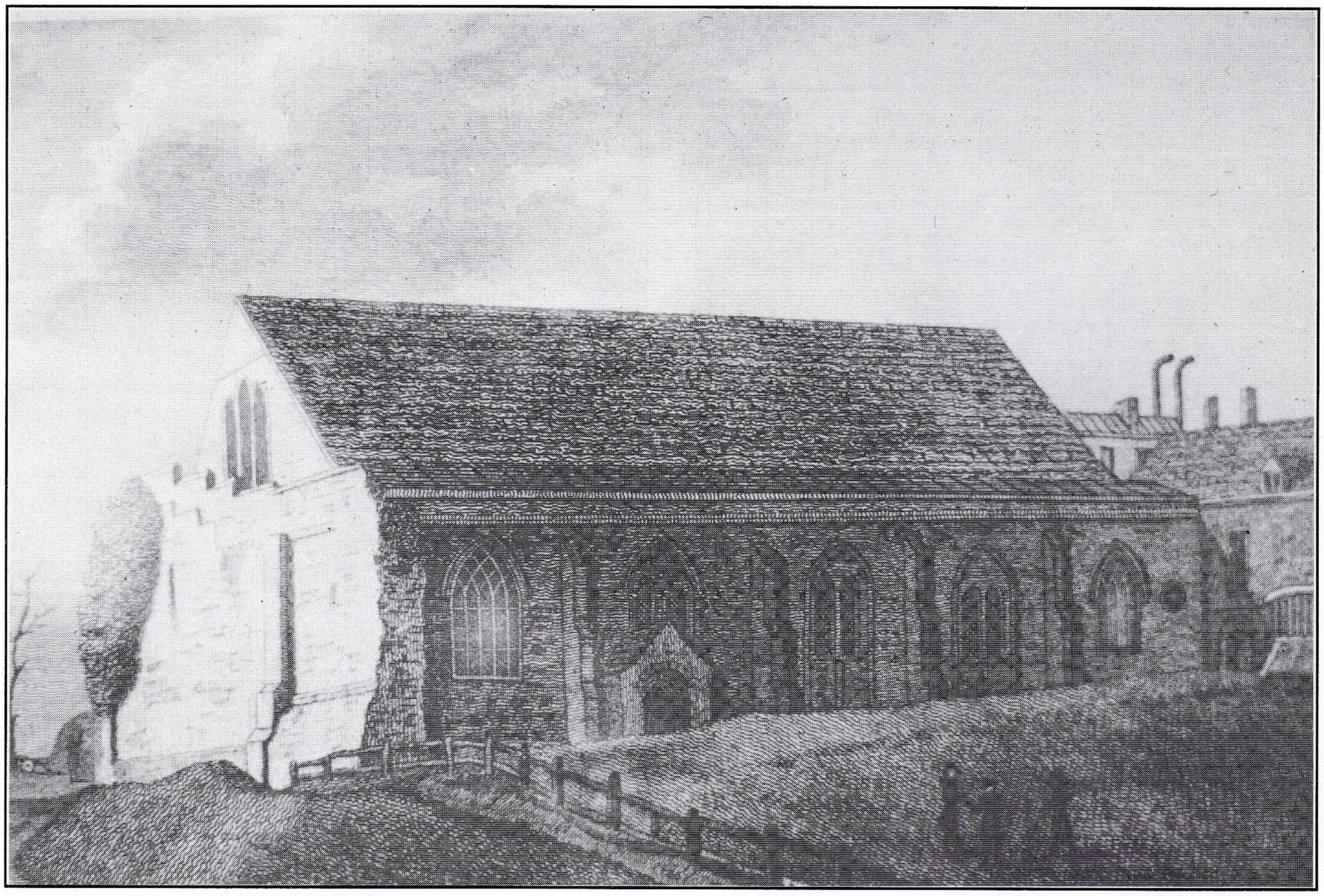
Baldwin really was a painter and he really had been to America; he was also an informant. At the moment he was working for the Earl Temple. Twenty years before Temple had served briefly as First Lord of the Admiralty. Now retired and pottering about his estate in Buckinghamshire, he sent Baldwin to Fielding to offer the magistrate his services. Baldwin spent his days talking with the prisoner and his evenings repeating what he heard to Fielding and also to Sandwich and even to Lord George Germain, the secretary of state for American affairs. This went on long enough for Fielding to follow leads that Baldwin picked up from his unwitting, new-found friend. Thus, for example, Fielding found out that the tin case had been made in Canterbury, not Portsmouth. He sent off his men to find the smith involved; they did, and brought him back with them to London.[47]

Consequently, on 24 February 'John the Painter' was brought before Sir John Fielding one last time. Fielding informed him that he had been charged with the capital offence of arson and would most likely be indicted and tried in the forthcoming assize court session at Winchester. He continued to show no emotion even though Fielding hinted that very damaging evidence had been gathered against him. Fielding told him that he knew of the trip to France and the meeting with Silas Deane. The prisoner admitted meeting Deane and receiving money from him, but would say no more.[48] Still planning on pleading his innocence and hoping that the evidence would be insufficient for a conviction, he did not yet realise the source of Fielding's most damaging information.

Fielding had met Sandwich, other Admiralty lords, and the Earl of Suffolk to discuss what charge to pursue soon after 'John the Painter' arrived in London. If they considered charging him with treason, and apparently they did, they eventually thought better of it.[49] Because treason was, as the jurist and legal scholar William Blackstone put it, the 'highest civil crime' that could be committed, rules of evidence would have to be followed scrupulously and conviction would have to be based on a certainty that might elude a jury.[50] Besides, there were other complicating factors involved which they may have considered. Rebellious Americans were not being prosecuted as traitors. Given questions surrounding the prisoner's background and the possibility that he had lived in the colonies and might try to characterise himself as an American patriot endeavouring to serve his country, a trial for treason could be problematical. Equally as vexing, by the time that the prisoner was formally charged and made ready for transfer to Winchester they knew that Edward Bancroft had come up - obliquely, and not by name - in his conversations with Baldwin. Calling too much attention to Deane and naming Bancroft could expose the spy ring that William Eden had put together for Suffolk. Therefore arson would have seemed a much safer choice, with conviction more likely and the political problems minimised. If they failed to win a conviction in Winchester they could push to have the suspect tried in Salisbury for the burglary in Calne. And if unsuccessful there they could transfer him to Gloucester to be prosecuted for a burglary he was accused of committing in Fairford.[51] If convicted for either of those offences he could be hanged and would end up just as dead.

Four of Fielding's men escorted the accused arsonist to Winchester. They arrived late in the evening of 25 February. 'John the Painter' or James Hind or James Hill - he was called all three - was clapped in irons and taken to the county gaol where he remained, except for brief exercise periods. Gaolers were instructed to keep the curious away, which was impossible when the prisoner came, shackled, outside. Gawkers shouted questions; he 'gave no direct Answers' to anything asked and seemed composed, even cheerful.[52] Since it was reported that

The scene of John the Painter's trial, the Great Hall of Winchester Castle, from an engraving published in 1787.
(Courtesy of and © Winchester Museums Service)



he appeared to realise that he could be convicted and, if convicted, surely hanged, perhaps he was trying to keep a brave face. Indictment by the local grand jury was a foregone conclusion.

By dawn on Thursday 6 March, the day of the trial, the streets of Winchester teemed with people making their way toward the castle. A crowd of several hundred squeezed into the Great Hall at 7 a.m., a full hour before the proceedings were scheduled to begin.[53] Perched on a slight rise overlooking the town, the hall is over one hundred feet long and fifty wide, with stone walls and two rows of stone columns supporting a vaulted beam ceiling. Built in the thirteenth century, it served as the site of assize and quarter session court hearings. It even had a link to England's mythical legal past. On one of the walls hung a huge oak disk, eighteen feet in diameter, that commemorated Arthur's round table - a symbol of justice and purity, and a reminder as well that Winchester had once been home to real Saxon kings.

Sir John Fielding came out from London for the trial; so did Sir Hugh Palliser, past comptroller of the Navy Board and now Sandwich's colleague in the Admiralty. Sandwich himself also came. Commissioner Gambier rode up from Portsmouth. He and the others who had tracked the accused probably had little doubt that a conviction would come; still, they could not be sure until the jury spoke. And they would not be satisfied if the prisoner defied them to the last. For retributive justice to work as intended the defiant 'John' needed to become contrite, accept the justness of his sentence, and warn others to avoid his evil ways unless they wanted to suffer the same horrid fate.

Exchequer court baron Beaumont Hotham presided. He and William Ashhurst, who sat on the Court of King's Bench, had been assigned as the two judges for the western circuit in this term. An admirer noted Ashhurst's 'benevolent heart' and 'profound Erudition'. He offered like praise for Hotham, who 'melted the obdurate' felon 'to Contrition and Repentance' as he became a father-confessor on the bench.[54] Their first sitting was in Winchester, beginning on 4 March, their last in Taunton on 29 March, a Saturday, when they heard all of the cases for Somerset - twenty-seven in one day. By the time Hotham and Ashhurst reached Taunton they had travelled over 250 miles and a return trip to London of 150 miles lay ahead of them. They held seven sittings in six different towns and in all they heard 130 cases involving 179 defendants. Of that total, forty were found not guilty; of those found guilty, twenty-eight were sentenced to hang. Four actually had sentence imposed and of those four, two were arsonists - one being James Aitken, at this point still known only by his pseudonyms.[55]

The assize court at Winchester belonged to a system that had been evolving since the reign of Edward I. Originally, circuit courts had been designed to extend the range of

Beaumont Hotham, Baron of the Court of Exchequer and assize court judge, wearing a scarlet robe lined in white fur, with black sash, his black sentencing cap in hand, as painted by Nathaniel Dance.
(Courtesy of Lord Hotham, Dalton Hall, Yorkshire)

monarchical authority to outlying counties. By the eighteenth century that role had been eclipsed by one of greater symbolic power. In the minds of jurists, assize courts were an institutional extension of a reverenced English constitution, reified rather than written but no less real because of it. English law, as Blackstone defined it, embodied a constitutional ideal. Its primary purpose was the preservation of liberty as well as the maintenance of order. The law's application could change over time, he emphasised, but not its intent, as successive generations passed it along as 'the best birthright, and noblest inheritance of mankind'.[56] On a symbolic level, then, each assize or 'sitting' of one of these courts was a ritualised reaffirmation of the rule of law and equity in society.

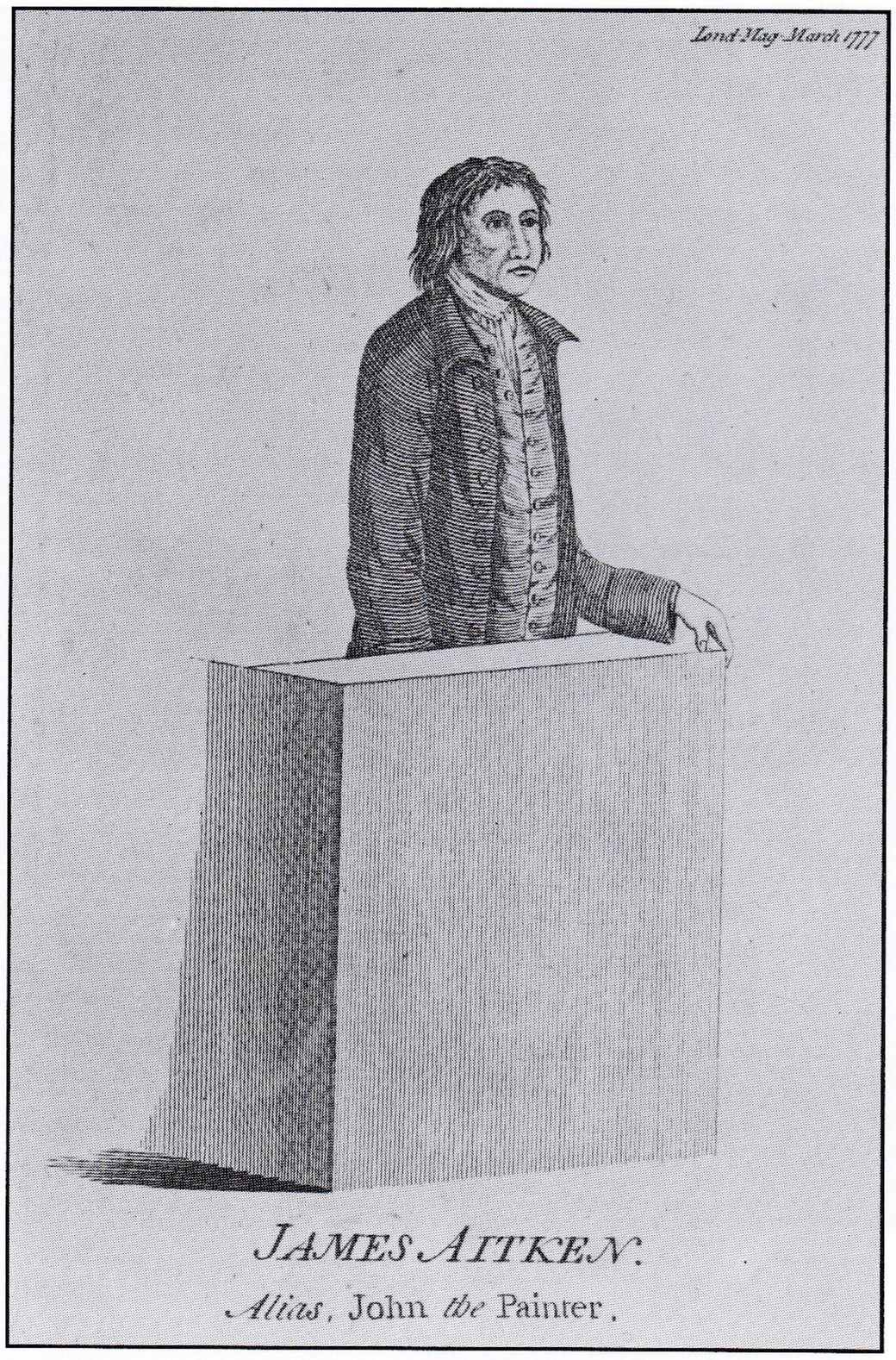
As an accused arsonist James Aitken did not have the right to counsel; only those accused of treason did. If he had asked to be represented Hotham might have allowed it, but he chose to represent himself. A prosecuting team of four barristers and one solicitor opposed him. Missing, the solicitor, was included because of his knowledge of the case. He had taken depositions after the Portsmouth dockyard fire and guided Gambier's men in their search for witnesses at Titchfield. The barristers were William Davy, Francis Buller, James Mansfield, and John Fielding, nephew and namesake of Sir John. Fielding, just beginning his career, would make brief opening remarks, after which Davy took over. An experienced courtroom performer, Davy had sometimes argued for the defence - most famously in the Somerset case, but more often he pleaded for the prosecution and had done so frequently on the western circuit. Mansfield and Buller, a protégé of Ashhurst, questioned some witnesses. Buller had been called to the bar just three years earlier; Mansfield, a barrister for over a decade, became King's Counsel the same year that Buller entered as a barrister. Both became judges in later years, Buller on King's Bench, Mansfield at Common Pleas where he rose to become chief justice.

Judges did not sit as passive observers, only interrupting to explain points of law or to keep the flow of testimony going. They had a great deal of leeway in asking questions, summarising matters for the jury, and expressing their opinion as to what testimony or evidence was most compelling. Few saw any conflict between intervention and impartiality. On the contrary, most would have argued for the necessity of intervention to protect the rights of the accused. Without advice of counsel most defendants did not know where to begin their preparations, including how to plead. Though an insanity defence was theoretically acceptable few lawyers knew how to employ it and most judges would have been unsympathetic to attempts at using it, either by lawyers or defendants trying to argue their own case. Defendants not knowing the law had no choice but to rely on judges to act in their best interests. Blackstone thought this inequitable, giving the prosecution an inherent advantage. Advising a defendant of his rights 'is a matter of too much importance to be left to the good pleasure of the judge' observed Blackstone, who spoke from experience.[57]

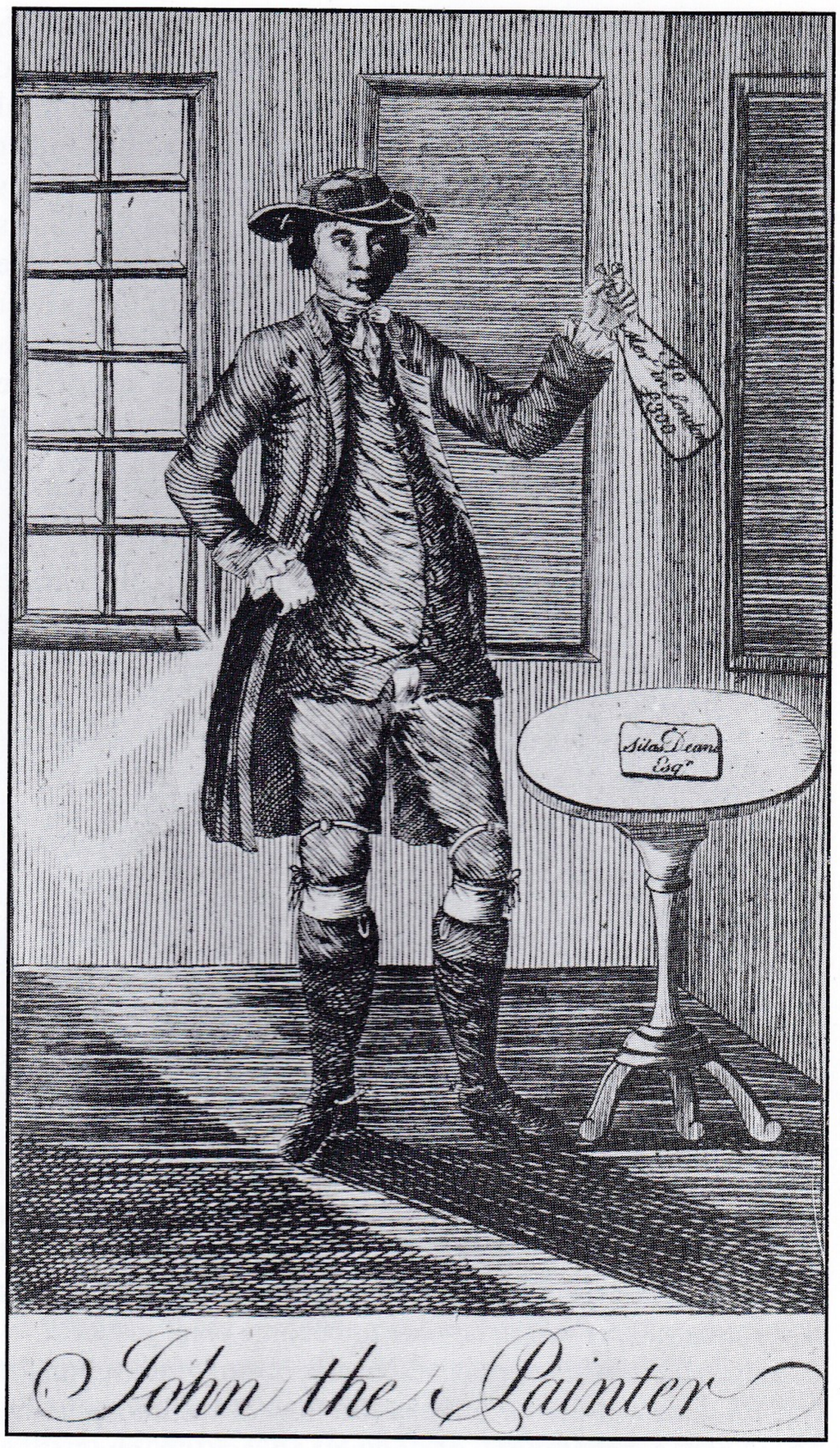
Problems for a defendant could be even more fundamental. The adage might hold 'that it is better that ten guilty persons escape, than that one innocent suffer', but that is not quite the same as saying one is presumed innocent until proved guilty.[58] The presumption of innocence was not as sacrosanct then as it is now and it was much more difficult to uphold without right to counsel. Add to that the prejudice which assumed defendants could not be trusted to testify honestly. That the accused was not to 'be a Witness in his own Cause' reflected a supposition that those who took the stand on their own behalf would lie, oaths to tell the truth notwithstanding.[59]

Distrust did not end at the witness bar; it could extend to the jury box. There were those who dismissed the average trial juror as not up to the task and the requirements for jury duty as too lax: a 'good and lawful' man, not older than seventy or younger than twenty-one, neither blind nor insane, with a £10 residential freehold in the county where the crime was committed.[60] The irony is that so much of the pride taken in the common law tradition hinged on the right of the accused to be tried by a jury of his peers - that 'great bulwark of his

A much scruffier-looking Aitken, drawn mid-trial for the London Magazine *(March 1777).*
(Portsmouth Museums & Records Service, 1371/1974)



A very dapper Aitken, whose implicit motive was gain - thus his holding a bag containing £300 - and the card 'Silas Deane Esq.' on the table to warn that conspiracy was afoot. From The Trial of James Hill, alias, John the Painter *(London: G. Corrall, 1777).*
(Courtesy of the Bodleian Library, University of Oxford, G. Pamph. 1580 [5])



liberties', as Blackstone put it.[61] Trial by jury was a vote of confidence in the ability of untrained men to weigh evidence, understand the concept of reasonable doubt, distinguish the probable from the improbable, and know when circumstantial evidence might be sufficient to warrant a conviction. Criminal cases could be very messy, with no reliable eyewitnesses and no irrefutable evidence, as the case of 'John the Painter' would show.

Directed to raise his hand after being ushered into the Great Hall at a few minutes past eight, the accused stood before the court to hear the indictment handed down by the grand jury. It referred to him by the various names he was known under and charged him with 'feloniously, wilfully and maliciously' burning the king's ropehouse and destroying the king's naval stores, with itemised hemp and cordage valued at £380, all of this in violation of a statute Parliament passed in 1772. The clerk asked, 'How say you, are you Guilty or not Guilty?' The prisoner replied, 'Not Guilty'. The clerk then asked, 'How will you be tried?' He responded, 'According to the laws of the country'. The clerk closed these formalities with his obligatory 'God send you a good deliverance'.[62] Twelve jurors filed in; the accused did not challenge any of them so they were put under oath and the trial began.

According to Thomas Lawrence, an innkeeper from Devizes who befriended the accused arsonist when he was imprisoned at Clerkenwell, he had 'refused the service of two very respectable council' after he found out, on the day before the trial, that his trusted confidant, John Baldwin, would be testifying against him. 'If that person did appear', Lawrence remembered him saying, 'their service would not avail him; if not, he should not have occasion to trouble them'.[63] It was in this peculiar state of mind, still hoping that he could wriggle free and yet suspecting that he would not, that Aitken - his real identity still unknown - prepared to defend himself.

There is no official trial transcript. Joseph Gurney, a professional notetaker from London who specialised in court cases, received permission to publish the proceedings after he transcribed them from his shorthand. Gurney's text would eventually be included in *State Trials*. William Blanchard, another professional notetaker, also came down from London

to cover what proved to be the most widely publicised trial in all of Britain that year. Some notable differences aside, the Gurney and Blanchard accounts agree on crucial points: that the trial was unusually long, some seven hours, not ending until 3 p.m.; that the prosecution called twenty witnesses while the defendant called none; and that William Davy, in leading the prosecution, and Beaumont Hotham, in summarising what he discerned from the bench, for all intents and purposes spoke to the same end.

From his opening statement on, Davy strove to shape the jury's impression of what they heard and put it into a context that he created. 'Let but the English navy be destroyed', he warned, 'and there is an end of all we hold dear and valuable'.[64] To heighten the sense of betrayal and fears of conspiracy he stressed that the man standing before them was part of a plot hatched by disloyal Americans. The accused had lived in the colonies and was seduced to the cause of rebellion there. He had been to Paris, met Silas Deane, and returned to England only to wreak havoc. This was quite dramatic but Davy knew that it might count for nothing if the defendant were not connected to the crime. He therefore concentrated on one piece of evidence the jury would see and one man's words that they would hear: the tin canister found in the south hemphouse and the testimony of John Baldwin.

Gambier may have winced at the way Davy brought up the tin canister. As Davy told it, inquiries after the 7 December fire turned up nothing and the presumption that the blaze was accidental did not change until 15 January, when the canister was discovered. Only then did the search for 'John the Painter' begin in earnest. Davy assured jurors that they would hear testimony linking the defendant to that canister. He would also produce witnesses who saw the defendant lurking about the ropehouse; in fact, they would hear that he had been found locked inside just the day before the fire.[65]

Aitken, struggling to keep track of what Davy said - after all, he had no witness list, no access to the prosecution's files, and no pen and paper in court - probably flushed with anger when Davy claimed that 'Baldwin was not set upon him' in an attempt to finagle information; rather, 'it was indeed the providence of God' that caused the prisoner to confide in his visitor.[66] None of those who testified against Aitken at Bow Street had worried him; Baldwin was an entirely different concern. Because of Baldwin, Aitken now heard, Fielding's men had found the tinsmith in Canterbury who made the canister. Because of Baldwin, Gambier's men tracked down the woman who sold the matches found alongside the canister, and another woman in whose house on the Common he had left a bundle, a bundle that included a French passport. All of these people appeared as witnesses for the prosecution in Winchester. In each instance Davy emphasised to the jury that the information leading to their testimony originally came from Baldwin and that the only person who could have told Baldwin these things was the arsonist himself - the very man on trial before them.

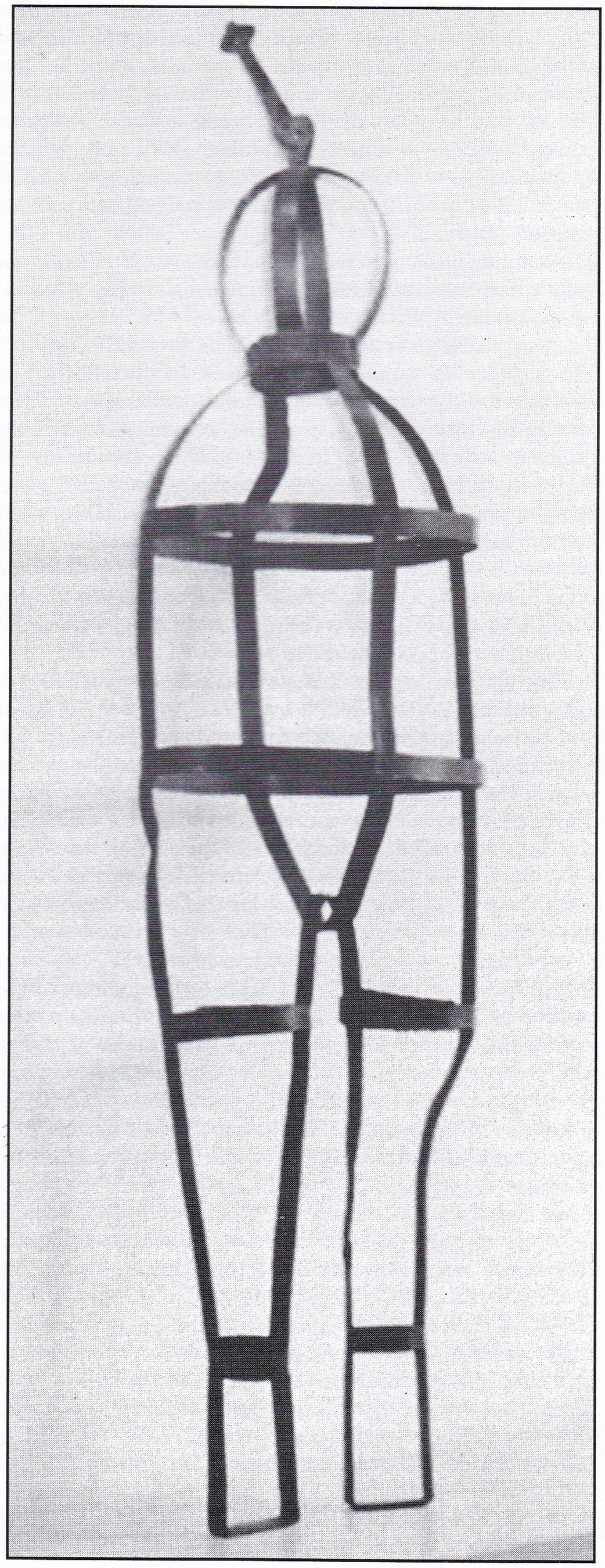
Aitken interrupted Baldwin's testimony with the hope that Hotham would decide it was tainted and not admit it as evidence. But Hotham ruled against him and allowed Baldwin to continue. After the prosecution rested and Aitken began his defence he tried again to discredit Baldwin. The other witnesses - Mrs Boxell, Abrams and Weston, those who could locate him in the yard around the time of the fire, and those who could place him in Canterbury and connect him to the canister - were nowhere near as important as Baldwin. 'I think it is possible - it may have been possible, for Mr Baldwin, or any other person that is any way at all intelligible, to bring evidence against me that that person has done' by reading accounts in the press or overhearing gossip, he contended. 'It is a false accusation', he protested, and 'whether it is a betraying of trust, through treachery of heart, God Almighty, the Great Judge of all, only knows'. He reiterated the objection he made during Baldwin's testimony: he had been entrapped and testimony based on deceit should be inadmissible. 'He that may have been able to betray me, and to speak things in the dark to me - he is able, also, I think, to give the lie to any man'.[67] Aitken wanted to leave jurors the impression that Baldwin could not be trusted and that the other testimony was inconclusive. Hotham, in summing up for the jury, saw it differently. 'I am sitting here to do equal justice between the public and the Prisoner', he informed the jury. Even so, he felt conscience-bound to 'make those observations' that were 'necessary and material' to their arriving at a verdict. Then, in a review of the testimony that went on for over an hour he proceeded to explain away inconsistencies in order to eliminate doubt. He defended the veracity of Baldwin's account and pointed out that Baldwin's version of events corroborated what others had said independently of him, and vice versa. 'Where you find it confirmed in almost every material passage, where you find it not contradicted in any one circumstance, you must then,' he advised the jurors, 'feel it, when so authenticated, to be a very strong body of evidence indeed'.[68]

Most likely none of the spectators gathered in the Great Hall was surprised when the jurors exchanged quick looks and a few words and 'pronounced the Prisoner GUILTY'. The clerk asked if there was any reason why the death sentence should not be imposed; the accused, now a condemned man, responded brusquely 'I have nothing to say'. Calling this the 'most painful' moment of the trial, Hotham spoke. 'It is my duty to pass upon you that dreadful sentence', he intoned as he placed the symbolic black cap upon his white wig. He urged a change of heart upon the prisoner, a recognition that repentance would save his soul even though it was too late to save his life. 'And therefore, before you go into eternity, for your soul's sake, do what you can, that that eternity may be an eternity of bliss instead of misery.' With that admonition Hotham pronounced sentence: 'I accordingly adjudge and order that you be hanged by the neck until you shall be dead, and the Lord have mercy on your soul'.[69]

Hotham looked for contrition; what he got was defiance. When he said 'painful moment', the prisoner interjected 'joyful'; when Hotham stated that he could offer no pardon the prisoner said 'I do not look for it my Lord'; when Hotham ended the prisoner commented, sarcastically, 'My Lord I am

The dangers awaiting those youths who wander off the path of respectability as shown in the frontispiece of The Malefactors Register, *5 vols, (London: Alexander Hogg, 1779). A concerned mother presents a copy to her son and points to the gallows in the background. James Aitken, infamous as 'John the Painter', joined others in the anthology of tales (vol. 5, pp. 228-235) whose lives became object lessons in the attempt to deter crime.*
(By permission of the British Library)

Gibbet irons in the Westgate Museum, Winchester, that by tradition are said to be those used to hang Aitken's body at the entrance to Portsmouth Harbour.
(Courtesy of and © Winchester Museums Service)



exceedingly well satisfied'.[70] As he was being led back to gaol a former employer waiting in the throng outside the Great Hall called to him, was recognised, and accompanied him down the hill. 'He seemed not at all affected with his fate or with the guilt of the fact for which he was condemned', reported this painter from Hungerford. Instead, 'he complained of unfair treatment in having treacherous fellows sent to visit him, to

A woodcut that is inaccurate in the details, but accurate where it counted most: symbolically, the evil arsonist receiving his just desserts. From A Genuine Account ... *(London: Robert Turner, 1777).*
(Courtesy of Dartmouth College Library, USA, KD/372/A47/A47/1777)

sift him before the trial and said, they could not have convicted him, had not such inquisitorial proceedings been made use of'.[71] These were hardly the sentiments of a contrite man.

But the recalcitrant, unrepentant 'John the Painter' disappeared within twenty-four hours. Perhaps the transformation began with the painter from Hungerford. Aitken had stolen from him and asked his forgiveness, which he received. Perhaps despair now displaced bravado and the lessons about honesty and integrity taught him long ago at Heriot's began to weigh on his conscience. Before he had become an arsonist he had been a thief, a highwayman, even a rapist, he finally admitted - 'to my shame be it said!'[72] He agreed to dictate a confession to Thomas Lawrence and to answer questions put to him by Sir John Fielding. He admitted to everything that he had been accused of but denied in court, and blamed himself for his fate. 'My being decoyed into the trap set for me by Mr Baldwin, to whom I disclosed the whole of my proceedings against government, has brought me to a death which the enormity of my crimes I deserve', he confessed, 'but which, through sincere repentance, I hope I will be forgiven, as I forgive Mr Baldwin, and all the world'.[73]

His confession complete, 'John' - now finally known by his real name - was allowed to take the sacrament on Sunday 9 March, the day before he was scheduled to die. Willing to meet his fate he had but one last request: that he be buried after he was hanged. Judges, he knew, could dispose of an executed felon's body in a number of ways. It could be turned over to friends or family for burial, it could be given to surgeons for anatomical instruction, or it could be gibbeted - suspended inside an iron cage. Thomas Lawrence was quite certain that Fielding led Aitken to believe that he would see to it he was not gibbeted. He also suspected that Fielding never intended to honour Aitken's request, but dangled the possibility before him to hasten his confession.[74]

Early in the morning of 10 March a shackled Aitken was taken by carriage from Winchester to Portsmouth. Arriving at the town gaol, he was transferred to a cart and carried in a procession led by the mayor and sheriff. They passed through the town gates, across the Common and into the dockyard, to the scene of his crime. The cart stopped at the east end of the rebuilt ropehouse where, Gambier reported to Sandwich, Aitken 'looked attentively at the door, and attempting to rise from his chair said I acknowledge the crime and am sorry for it'.[75]

The cart retraced its tracks to the gate and came to a final stop 100 yards outside it. There a newly-erected gallows awaited, just off the hard on the Common. A small stage eight feet square and four feet high had been built around the mizzen mast of the *Arethusa*.[76] At the top of the mast, some sixty-five feet overhead, a rope ran through a block and tackle. At one end stood men ready to haul on it, at the other was a noose. A crowd of 20,000 stood by to watch. Sandwich, Palliser and Fielding were not part of it. The execution was an anticlimax, necessary for the public but not for them. Aitken had confessed; they returned to London satisfied. Aitken knelt in silent prayer, rose, the halter was slipped around his neck, and just before he dropped the handkerchief signalling he was ready, he reportedly told the crowd:

Good people, I am now going to suffer for a crime, the heinousness of which deserves a more severe punishment than what is going to be inflicted. My life has been long forfeited by the innumerable felonies I have formerly committed, but I hope God, in his great mercy, will forgive me, and I hope the public, whom I have much injured, will carry their resentment no further, but forgive me, as I freely forgive all the world, and pray for me, that I may have forgiveness above. I have made a faithful confession of every transaction of my life from my infancy to the present time, particularly the malicious intention I had of destroying all the dockyards in this kingdom, which I have delivered to Mr White, and desired him to have printed, for the satisfaction of the public. I die with no enmity in my heart to his majesty and government, but wish the ministry success

'Jack the Painter' as bogeyman, from The Life of James Aitkin, alias Jack the Painter *(London: George Smeeton, 1780).*
(Boston Public Library/Rare Books Dept, Courtesy of the Trustees, H.99c.199)

'Jack the Painter' in a later incarnation, no longer a bogeyman, instead, an earnest, even innocent-looking fellow. A woodcut of 1813 done by G. Smaeon of London, illustrating By Authority, the Trial of James Hill, alias John the Painter *(London: G. Corrall [1777]).*
(Courtesy of the John Carter Brown Library, Brown University)

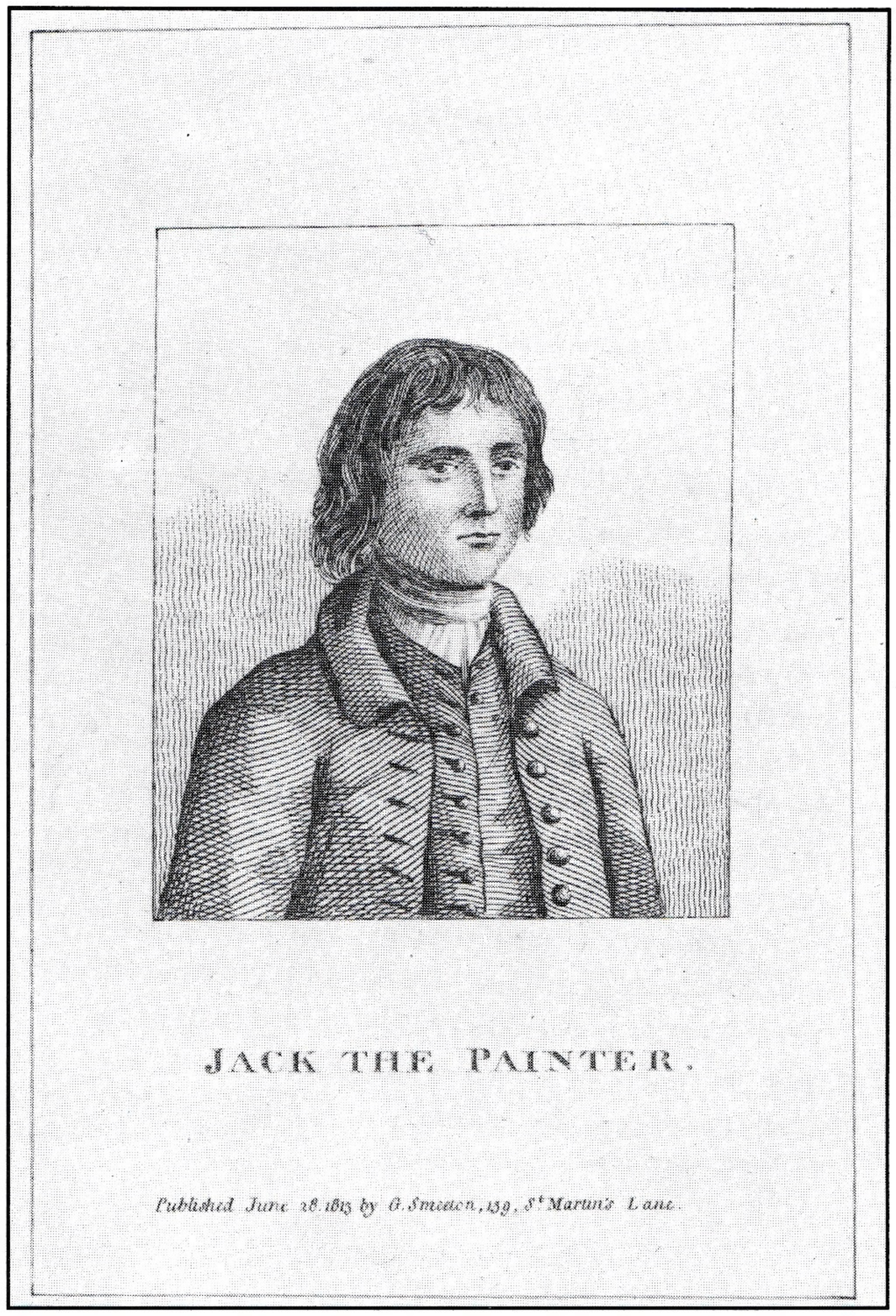
in all their undertakings; and I will hope my untimely end will be a warning to all persons, not to commit the like atrocious offence.[77]

Aitken faced death bravely. 'He did not struggle much: the conflict was soon over'.[78] With the demands of retributive justice now met and the spectacle ended, the crowd melted away. Aitken's lifeless body was lowered to the ground and, still in chains, placed in a gibbet. It was rowed across the harbour entrance to Blockhouse Point and suspended for all to see - a scarecrow, a warning.

The nation could now breathe a collective sigh of relief; a pyromaniac had been stopped. Knowledge of the full extent of his plans, which came only after the fact, must have added to the sense of excitement, the alarm - the thrill - that disaster had narrowly been averted. The arsonist had confessed the error of his ways. He gave no impassioned speech about the sanctity of the American cause; instead, he accepted George III as his king - too late the traitor rediscovered his proper loyalty. But then if Aitken abandoned the American cause he had himself already been abandoned, by the duplicitous Bancroft and an uncaring Deane. After the execution Deane admitted that he had met Aitken but he also gave the impression that he and Aitken had not acted in concert - that Aitken was, as detractors charged, merely a 'wretched enthusiast'. Not until after the war, and then only privately in a letter to Bancroft, did Deane tell the truth about their connection. Deane did not contact Aitken during his imprisonment or argue his case in the British press or mention him in dispatches to Congress. He could not have saved him from the hangman's noose but he might have given him some solace, some sense of honour. American sailors held at Forton Prison just outside Gosport, the first of whom began arriving in June 1777, may have seen the gibbet at Blockhouse Point as they passed into Portsmouth harbour. If they learned whose body it contained they had little reason to consider James Aitken one of their own, a martyr to their cause.

Members of the political opposition who had feared 'John the Painter' in life and were happy to see Aitken executed tried to use the hapless Scot in death. Partisan hyperbole and oblique attacks on the North ministry were slipped into specious biographies.[79] The likeminded probably found them amusing, government supporters probably found them irritating, and anyone in the general public trying to sift fact from fancy may have been hopelessly confused. Most bizarre of all was an attempt to link Aitken to a spurious plot against George III. In February 1777 David Brown Dignam, a confidence man, contrived a tale about various disaffected politicians, reaching into the House of Commons, who planned to assassinate the king. The French ambassador, claimed Dignam, was involved, as was the suspected arsonist then being questioned at Sir John Fielding's Bow Street court. Initially causing a stir, eventually he was exposed.[80]

By then James Aitken, infamous as 'John the Painter,' had become carrion in his gibbet. The fate of his remains is shrouded in mystery. According to one account 'some sailors took the skeleton of this wretched man down some years after his execution, placed it in a sack, and left it in the chimney-corner



of a public house in Gosport'.[81] According to another, many years later a skeleton, minus head and arms, was found buried in the soil beneath the spot where the gibbet had hung.[82] A mummified finger supposedly cut from Aitken's hand and used as a tobacco stopper was passed along into this century, as were an awl and bottle of turpentine.[83] These and other purported relics are marks of the arsonist's absorption into local lore - proof that vestiges from bygone eras continue to fascinate us. James Aitken, now remembered only as 'Jack the Painter', lives on as an eccentric figure from an elusive past.

REFERENCES

[1] Aitken's birth is recorded in the Parochial Register, County of Edinburgh, Edinburgh, Births, 1750-1752, Scottish Record Office (hereafter **SRO**); his siblings, the eldest in 1742, the youngest in 1759, can be found in appropriate volumes of the same series.

[2] George Aitken is listed in the Record of Interments in Greyfriars Burying-Ground, Edinburgh, 1 January 1756 to 30 July 1767, p. 43, also in the SRO. His wife, who died in 1780, is in *ibid.*, 1 July 1771 to 17 January 1785, p. 223. One of James Aitken's last requests was that he be allowed to send a letter to his widowed mother.

[3] Aitken's admission to Heriot's is entered in the 'Chronological register of boys educated at George Heriot's Hospital, 1659-1902', SRO, GD 421/10/7; his apprenticeship to Bonnar is noted in the 'Register of boys educated at George Heriot's Hospital, 1748-1821', SRO, GD 421/10/9.

[4] *The Life of James Aitken, commonly called John the Painter* (Winton [Winchester]: J. Wilkes, [1777]), pp. 14-15. (Hereafter ***Life***).

[5] *Ibid.*, pp. 15-16.

[6] *Ibid.*, pp. 18-19. In a final confession printed in *The Public Advertiser*, 18 March 1777, and the *Hampshire Chronicle*, 24 March 1777, Aitken said nothing about the Boston Tea Party or of going north at all.

[7] *Life*, p. 23.

[8] See Roger John Beckett Knight, *The Royal Dockyards at the time of the American War of Independence* (Ph.D. thesis, University of London, 1972); Brian Lavery's *The Arming and Fitting of Engllish Ships of War, 1600-1815* (Annapolis: Naval Institute Press, 1987) and *Building the Wooden Walls* (Annapolis: Naval Institute Press, 1991); and Mary B. Wickwire, *Lord Sandwich and the King's Ships: British Naval Administration, 1771-1782* (Ph.D. dissertation, Yale University, 1963).

[9] Silas Deane to Edward Bancroft, unsigned and undated, Silas Deane Papers, Box 2, Connecticut Historical Society; also printed in Charles Isham, ed., 'The Deane Papers', *New York Historical Society, Collections*, 5 vols (1886-1890), vol. 2, p. 9. Julian Boyd, 'Silas Deane: Death by a Kindly Teacher of Treason?', *William and Mary Quarterly*, 3rd series 16 (1959), pp. 165-187, 319-342, 515-550 (see pp. 337-342), goes astray here, dating the letter 'ca. March 20 1777'. Boyd was trying too hard to prove his theory that Deane wrote the letter as a ruse to fool the British and protect Bancroft. He missed an explicit reference to 1778 and a veiled allusion to Admiral Rodney's defeat of Admiral de Grasse in April 1782 at the Battle of the Saints. Aitken was 'O' in Bancroft and Deane's coded letters. Boyd argued that the code was worked out in October 1776 and that therefore Bancroft knew Aitken's true identity *before* the Portsmouth fire. But the first time that Bancroft employed the code was in a letter of 7 February 1777. I think it more likely that Bancroft learned of Aitken's tie to Deane when he visited Deane in Paris after the fire and after his encounters with Aitken in London. Bancroft and Deane met in Paris sometime between the end of November 1776 and the end of January 1777 - see Bancroft's letters to Deane of 26 November 1776 and 31 January 1777 in Isham, ed., 'Deane Papers' vol. 1, pp. 364-365 and 479-481 respectively. Perhaps it was Aitken's unexpected appearance in London that prompted Bancroft to make the cross-channel trip and only then did Deane tell him about Aitken - and even then not everything.

[10] *Life*, pp. 33-34.

[11] *Ibid.*, p. 10, Aitken's recollection of Deane's reaction.

[12] *Life*, pp. 34-35.

[13] Joseph Gurney, *The Trial (At Large) of James Hill*, otherwise *James Hind*, otherwise *James Actzen* (London: G. Kearsly [1777]), p. 18; also [William Blanchard] *The Whole of the Proceedings upon the Trial of James Hill, otherwise* James Hind, *otherwise* John Hind, *otherwise* James Acksan, *commonly called John the Painter* (London: J. Wenman [1777]), p. 16. Both are reporting the testimony of John Baldwin, who was repeating what Aitken told him.

[14] James Gambier to the Navy Board, 12 December 1776, Portsmouth Dockyard Records (POR) F/16, National Maritime Museum, Greenwich (hereafter **NMM**).

[15] Gambier to the Navy Board, 7 December 1776, *ibid.*

[16] Gambier to the Navy Board, 26 December 1776, *ibid.* Faithfull did not remain a hero for long. When it was eventually learned that he and Noke had been the ones who let Aitken out of the ropehouse on 6 December without reporting the incident they were fired, the order to do so coming on the same day that Aitken was hanged - see the Navy Board to Gambier, 10 March 1777, *ibid.*, G/1/70.

[17] Gambier to the Navy Board, 8 December 1776, *ibid.*, POR F/16.

[18] Gambier to the Navy Board, 12 December 1776, *ibid.*

[19] Compare the report in the *Scot's Magazine*, December 1776, p. 673, with the *Public Advertiser*, 10 December 1776, and *Hampshire Chronicle*, 16 December 1776, accounts.

[20] Details on ships in the yard can be found in R. J. B. Knight, ed., *Portsmouth Dockyard Papers, 1774-1783: The American War* (Portsmouth: City of Portsmouth, 1987; vol. 6 of the Portsmouth Records Series), Appendixes VIII and IX, pp. 158-165.

[21] George III to the Earl of Sandwich, 8 December 1776, Sandwich Papers F/45c/63, NMM.

[22] *The Portsmouth Guide* (Portsmouth: E. Carr, 1775), pp. 33-38; Henry Slight & Julian Slight, *Chronicles of Portsmouth* (London: Lupton Relfe, 1828), p. 214.

[23] Gambier letterbook, between 28 and 29 December 1776, POR D/20, NMM, inserted by clerk Thomas Nichols and dated 12 December - which seems too early.

[24] Gambier to the Navy Board, 31 December 1776, postscript dated 2 January 1777, *ibid.*, F/16.

[25] *Ibid.* Also see Gambier to the Navy Board, 24 December 1776, *ibid.*, and the Navy Board to Gambier, 26 December 1776, *ibid.*, G/1 p.64.

[26] *Life*, p. 46.

[27] *Ibid.*, p. 47.

[28] Lewis Einstein, *Divided Loyalties: Americans in England During the War of Independence* (Boston: Houghton Mifflin Co., 1933), called Wentworth a 'master spy' (p. x). His enthusiasm for the importance of the spy network is echoed by Cecil Currey, *Code Number 72: Ben Franklin, Patriot or Spy?* (Englewood Cliffs: Prentice Hall, Inc. 1972), who depicted the Eden-Wentworth operation as 'ruthlessly efficient'. Much of the enthusiasm is tied to correspondence and notes left by Eden, later Lord Auckland, in the Auckland Papers, Add. MS 34,413, British Library. There is not that much there and Richard W. Van Alstyne's caution in 'Great Britain, the War for Independence, and the 'Gathering Storm' in Europe, 1775-1778', *Huntington Library Quarterly* 27 (1964), pp. 311-346, against exaggerating the importance of this espionage is well-taken.

[29] Life, pp. 48, 57.

[30] George III to Sandwich, 16 January 1777, Sandwich Papers F/45c/71, NMM; also see Sandwich to the king, 16 January 1777, in Sir John Fortescue, ed., *The Correspondence of King George III, 1760-1783*, 6 vols (London: Macmillan and Co., 1927-1928), vol. 3, p. 416.

[31] Dated Portsmouth, 16 January 1777, printed in *The London Magazine*, January 1777, p. 50. *The Public Advertiser*, 18 January 1777, *St James Chronicle*, 18 January 1777, and *Hampshire Chronicle*, 20 January 1777, all reported the finding of the 'tin box'; the *Morning Chronicle*, 23 January 1777, reported the discovery and included a drawing of that 'incendiary device'. So did *The Gentleman's Magazine*, January 1777, p. 44.

[32] *The London Gazette*, 21 January 1777.

[33] *The Public Advertiser*, 24 January 1777; here and other papers such as the *Morning Chronicle* and *London Evening Post* running into February, until word of 'John the Painter's' capture was well-known. Admiralty authorization of the advert was noted in the Navy Board minute book, 22 January 1777, Admiralty 106/2594, Public Record Office (hereafter **PRO**).

[34] For background see John Fielding Esq., *A Plan for Preventing Robberies within Twenty Miles of London* (London: A Millar, 1755); Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, 5 vols (London: Stevens & Sons Ltd., 1948-1968), vol. 3, pp. 1-62; and Frank McLynn, *Crime and Punishment in Eighteenth-Century England* (London: Routledge, 1989).

[35] James Lowe to the Navy Board, 27 January 1777, POR G/1 p. 69, NMM.

[36] Aitken related this himself in his *Life*, pp. 59-60. According to local legend - see the *Basingstoke Gazette*, 5 August 1949 - he was seized at the *Raven Inn*, Hook (Newnham), just north of Odiham.

[37] John Howard, The State of *Prisons in England and Wales*, 4th ed. (London: J. Johnson

and C. Dilly, 1792; orig. ed., 1777), p. 372.
[38] Navy Board to James Lowe, 29 January 1777, Admiralty 106/2594, PRO.
[39] Navy Board to Gambier, 29 January 1777, POR G/1 pp. 68-69, NMM.
[40] Navy Board to Gambier, 27 January 1777, *ibid.*, pp. 67-68.
[41] Gambier to the Navy Board, 28 January 1777, *ibid.*, F/16.
[42] Letter of 3 February 1777, *ibid.*, G/1 p. 69.
[43] *Morning Chronicle*, 8 February 1977; also the *Hampshire Chronicle*, 10 and 24 February 1777; *London Chronicle*, 6 and 8 February 1777; *St James Chronicle*, 8 and 11 February 1777; *Public Advertiser*, 10 and 19 February 1777; and the *London Evening Post*, 13 February 1777.
[44] *The London Magazine*, February 1777, pp. 109-110.
[45] James Hanway, *The Defects of Police and the Causes of Immorality* (London: J. Dodsley, 1775), p. 78. Howard, *State of the Prisons*, pp. 232-234, describes Clerkenwell.
[46] These details only came out after the trial. See Gurney, *Trial*, p. 15; [Blanchard] *Whole of the Proceedings*, p. 12. Also see George Germain to Sandwich, 20 February 1777, Sandwich Papers F/10/44, NMM.
[47] *St James Chronicle*, 1 March 1777.
[48] *Ibid.*, 25 February 1777; *London Chronicle*, 25 February 1777.
[49] Or so reported the *Morning Chronicle*, 4 February 1777.
[50] William Blackstone, *Commentaries on the Laws of England*, 4 vols (Chicago: University of Chicago Press, 1979; facsimile of orig. 1765-1769 ed.), vol. 4, p. 75 (Book IV, Chapter 6).
[51] *Hampshire Chronicle*, 3 March 1777.
[52] *Ibid.* Also the *Public Advertiser, St James Chronicle*, and the *London Chronicle*, all for 4 March 1777. An unsigned, undated letter in the Deane Papers, Box 2, observed that 'John the Painter will probably be tried in Winchester on Thursday. Lord Sandwich and many others being gone as on a Party thither - Lord Temple now boasts of the perfidious scheme employed to ensnare the Fellow. The principal agent of the business was a Welch man named Baldwin, who married a girl of the name of Thompson in New Jersey & had worked as a painter at Philadelphia and afterwards at Lord Temple's Country House, whether Hill ever owned the untruths imputed to him, or whether Baldwin asserts them for the sake of obtaining a promised reward I know not'.
[53] *Morning Chronicle*, 8 March 1777; *Hampshire Chronicle*, 10 March 1777.
[54] [Edward Wynne] *Strictures on the Lives and Characters of the most Eminent Lawyers of the Present Day* (London: G. Kearsley, 1790), pp. 120, 173.
[55] The cases for Lent term 1777 are listed in the Gaol Book, Assize 23, vol. 8, Part I of the Assize Records, Western Circuit, PRO. There are few details for any of them.
[56] Blackstone, *Commentaries*, vol. 4, p. 436 (Book IV, Chapter 33). Also see the fine discussion in J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986).
[57] Blackstone, *Commentaries*, vol. 4, p. 350 (Book IV, Chapter 27).
[58] *Ibid.*, vol. 4, p. 352.
[59] [Geoffrey Gilbert] *The Laws of Evidence* (Dublin: Sarah Cotter, 1754), pp. 87, 94. Blackstone thought this an 'excellent treatise' (*Commentaries*, vol. 3, p. 367n, Book III, Chapter 23).
[60] *The Complete Juryman* (London: Henry Lintot, 1752), p. 11.
[61] Blackstone, *Commentaries*, vol. 4, pp. 342, 343 (Book IV, Chapter 27).
[62] [Blanchard] *Whole of the Proceedings*, p. 1.
[63] [Thomas Lawrence] *A Narrative of Certain Facts, Related by Mr Lawrence, of the Bear Inn, Devizes* (London: T. Evans, 1777), pp. 39-40.
[64] Gurney, *Trial*, p. 10; [Blanchard] *Whole of the Proceedings*, p. 7.
[65] Gurney, *Trial*, pp. 5-6; [Blanchard] *Whole of the Proceedings*, pp. 2-3.
[66] Gurney, *Trial*, p. 7. Davy returned to the theme of providential deliverance at other points in his opening remarks. See *ibid.*, pp. 8-10; likewise [Blanchard] *Whole of the Proceedings*, pp. 3-7.
[67] Gurney, *Trial*, p. 25; [Blanchard] *Whole of the Proceedings*, p. 23.
[68] Gurney, *Trial*, p. 32; [Blanchard] *Whole of the Proceedings*, p. 30.
[69] Gurney, *Trial*, p. 37; [Blanchard] *Whole of the Proceedings*, p. 34.
[70] *Ibid.*, with the latter account recording Aitken's final response as *'I am exceedingly willing to die, more so than to live'*.
[71] *Hampshire Chronicle*, 17 March 1777.
[72] *Life*, p. 22.
[73] *Ibid.*, p. 60.
[74] [Lawrence] *Narrative*, pp. 16-38.
[75] Gambier to Sandwich, 10 March 1777, Sandwich Papers F/10/52, NMM compare this with the *London Chronicle*, 13 March 1777.
[76] *Morning Chronicle*, 12 March 1777; *London Chronicle*, 13 March 1777; *Hampshire Chronicle*, 17 March 1777; Gurney, *Trial*, p. 40; Gambier to the Navy Board, 10 March 1777, POR F/16, NMM.
[77] *Life*, pp. 62-63. Though it is not inconceivable that Aitken mentioned White, it is also possible that Wilkes, the printer, took some liberties with the speech to authenticate and sell the *Life*. This and other gallows confessions need to be read somewhat sceptically, as the scene at Tyburn in Hogarth's allegorical satire on *'Industry and Idleness'* reminds us. A printed version of the soon-to-be-hanged idle 'prentice's last words are shown being sold before the noose is even around the condemned man's neck.
[78] *The Trial at Large of James Hill*, otherwise *James Hind*, otherwise *James Aitken, Commonly known by the name of John the Painter*, 2nd ed., n.p. (1777), pp. 79-80; Gurney, *Trial*, p. 40
[79] See *The Whole Life and Confessions of James Hill, commonly called John the Painter* (Winchester: Jones, Cooper & Co., 1777), which is almost identical to *The History and Important Discoveries of John the Painter* (Salisbury: J. Hodson, 1777); *A Short Account of the Motives Which Determined the Man, called John the Painter* (London: John Williams, 1777); and *John the Painter's Ghost* (London: J. Williams, 1777).
[80] The Dignam episode is reviewed in the *St James Chronicle*, 8 April 1777; *The Gentleman's Magazine*, April 1777, pp. 191-192; *The Universal Magazine*, March 1777, pp. 163-164; and *The London Magazine*, April 1777, pp. 221. The unsigned, undated letter that started it all is in the Auckland Papers, Add. MS 34,413, fos 240-241, British Library. There are some other relevant letters in that same collection; also see the Earl of Shelburne to the Earl of Hardwicke, Hardwicke Papers, Add. MS 35,613, f. 265, British Library.
[81] Slight & Slight, *Chronicles of Portsmouth*, p. 137.
[82] *Hampshire Telegraph and Sussex Chronicle*, 22 November 1884.
[83] The finger passed to the Portsmouth City Museum and was destroyed in German air-raids during World War II. The awl and bottle of turpentine were bought by Portsmouth City Museums (now Portsmouth Museums and Records Service) when the United Services Institute Museum was broken up in 1963.

SOURCES

A good place to start is Thompson Cooper's brief entry for James Aitken in Leslie Stephen, ed., *The Dictionary of National Biography*, 21 vols (Oxford: Oxford University Press, 1885-1890), 1 p. 205, even though there is much that Cooper missed. I wrote the essay for *The New Dictionary of National Biography* (Oxford: Oxford University Press, forthcoming).

Cooper, the most prolific of the original D.N.B. essayists, he wrote well over 1.000 pieces, alluded to Joseph Gurney's transcript of *The Trial (At Large) of James Hill*; otherwise *James Hind*; otherwise, *James Actzen* (London: G. Kearsly, [1777]), noted that he took most of his information from *The Life of James Aitken, commonly called John the Painter* (Winton [Winchester]: J. Wilkes, [1777]), and warned that there were spurious accounts as well, to wit: *A Short Account of the Motives Which Determined the Man, Called John the Painter* (London: John Williams, 1777) and *John the Painter's Ghost* (London: J. Williams, 1777).

Some more recent writers have mentioned Aitken in passing - most notably Mary E. Knapp in 'John the Painter and Silas Deane', *The Yale University Library Gazette*, 29 (1955), pp.137-147, and Julian P. Boyd, 'Silas Deane: Death by a Kindly Teacher of Treason?', *William and Mary Quarterly*, 3rd series 16 (1959), pp. 165-187, 319-342, and 515-550 (see pp. 337-342) - but only two modern historians have studied him in detail: William Bell Clark, 'John the Painter', *Pennsylvania Magazine of History and Biography*, 63 (1939), pp. 1-23, and M. J. Sydenham, 'Firing His Majesty's Dockyard: Jack the Painter and the American Mission to France, 1776-1777', *History Today*, 16 (1966), pp. 324-331. Sydenham's essay is interesting but adds little to what Clark had already discussed and did not draw from as many sources. Both went to Gurney's *Trial* and the *Life* published by Wilkes and to some of the same magazine and newspaper sources, with Sydenham drawing from the *Hampshire Chronicle* while Clark turned more to *The Public Advertiser*. Only Clark went to Charles Isham, ed., 'The Deane Papers', *New-York Historical Society, Collections*, 5 vols (1886-1890) and B. F. Stevens, comp., *Facsimiles of Manuscripts Relating to America, 1773-1783*, 25 vols (London, 1889-1898).

Thomas R. Adams, *The American Controversy*, 2 vols (Providence: Brown University Press, 1980), lists (in vol.1, pp. 478-486, 507-508, and 524) entries for virtually every purported autobiography and trial account - not just Gurney's *Trial*, Wilkes' *Life*, and the other, more suspect, renditions, but also Thomas Lawrence's *A Narrative of Certain Facts* (London: T. Evans, 1777), which I am quite sure I would never have known about otherwise. Adams included in his entries the location of surviving copies. Some were reproduced in the microfilm edition that he assembled with Colin Bonwick, *British Pamphlets Relating to the American Revolution, 1764-1783*, 49 reels microfilm (West Ardsley: Microform Ltd, 1982). Thanks to the Boston Public Library, the John Carter Brown Library at Brown University, the Houghton Library at Harvard, and the William L. Clements Library at the University of Michigan, I was able to obtain those not filmed as well. Adams did not locate a copy of *A Genuine Account of the Life, Transactions, Confession, and Execution, of James Aitken, Alias John Hill, Commonly Called John the Painter* (London: Robert Turner, 1777). I could not find a copy either until K. C. Ball of Portsmouth Museums and Records Service located one at the Baker Library, Dartmouth College, while she was, as *aficionados* put it, 'surfing' the Internet.

I am convinced - as was Thompson Cooper - that Wilkes's *Life* is the most reliable of the purported autobiographies, and that we can accept as basically true Wilkes' claim that he printed the text Aitken dictated to Winchester's town jailer as he awaited execution. Still, Wilkes may well have exercised some literary licence and the *Life* should be used advisedly. Cooper had rightly dismissed the *Short Account* as spurious. He did not mention *The History and Important Discoveries of John the Painter* (Salisbury: J. Hodson, 1777) or *The Whole Life and Confession of James Hill, commonly called John the Painter, From a Manuscript of his own Writing* (Winchester: Jones, Cooper, & Co., 1777), but these two pamphlets, which are almost identical in their autobiographical segments, can be put into the same category. Both also touched on the trial. The *History* was content to give a brief, paraphrased overview; the *Whole Life* did that too, but also included what was presented as verbatim testimony by a couple of witnesses and a drawing of the tin case found in the south hemphouse. *John the Painter's Ghost*, as Cooper recognised, was simply a spoof. *The Life of James Aitkin, Alias Jack the Painter* (London: G. Smeeton [1780]) was shamelessly pirated, in a truncated form, from Wilkes' *Life*. Still, it may mark the first appearance of 'John' transmogrified into 'Jack'.

Wilkes' transcript of *The Trial of James Hill, commonly called John the Painter* (Winton [Winchester]: J. Wilkes, 1777) is incomplete and less reliable than his *Life*. *The Trial of James Hill, alias, John the Painter* (London: F. Foresight, 1777) and the broadside printed as *The whole Trial of John the Painter, for setting Fire to the Rope-House at Portsmouth* (n.p., n.d.) are also truncated and cannot begin to match Gurney's *Trial* - later reprinted in T. B. Howell, ed., *A Complete Collection of State Trials*, 33 vols (London: Longman, Hurst, Rees, Orme, and Brown, 1809-1826), vol. 20, pp.117-136. *The Trial at Large of James Hill*, otherwise *James Hind*, otherwise *James Aitken, Commonly Known by the Name of John the Painter*, 2nd ed. (1777), is a more detailed version of *By Authority, The Trial of James Hill, alias, John the Painter* (London: G. Corrall, [1777]). It includes Hotham's summation for the jury (probably adapted from Gurney's *Trial*), Aitken's formal confession, and autobiographical details lifted from Wilkes's *Life* - none of which appeared in the first edition. That first edition appears to have been pirated from *The Whole of the Proceedings upon the Trial of James Hill, Otherwise* James Hind, *otherwise* John Hind, *otherwise* James Acksan, *commonly called John the Painter* (London: J. Wenman, [1777]), which was transcribed from shorthand notes taken by William Blanchard of London. Blanchard, like Joseph Gurney, attended the trial. Although Gurney's *Trial* and Blanchard's *Whole of the Proceedings* agree on basic facts, Blanchard's rendition, by including a number

of exchanges between Aitken and the prosecution, and even between Aitken and Hotham, leaves a rather different impression of the courtroom scene. There one can get a sense of the heightened emotions on both sides *and* the difficulties of conducting a defence without the benefit of counsel that can be lost when reviewing the Gurney version. Thus, even though Gurney's *Trial* is the only official transcript, it cannot be taken as complete. Gurney missed some - perhaps many - of the words; what is more, he missed the drama of the moment. But there are no other texts against which these two can be measured. The official record kept by the assize clerk and preserved in the Gaol Books, Assize 23, Volume 8, Part I of the Assize Records, Western Circuit, Public Record Office, Kew, enters the name - in Aitken's case, names - of the accused, the charges, the verdict, the sentence, and virtually nothing more.

Magazine coverage of the trial was extensive and each account had its own twist as it worked in information not included in other versions. 'A summary Account of the Life, Trial, and Confession of John the Painter' in *The London Magazine*, March 1777, pp.115-119, admitted that it took its biographical details from Wilkes's *Life*, but it also has an 'accurate' likeness of Aitken and a picture of the tin case. *The Universal Magazine*, March 1777, pp.144-150, has no illustrations. *The Scots Magazine*, March 1777, pp.161-166, borrowed freely from *The Gentleman's Magazine*, March 1777, pp.120-124, but then added Aitken's confession and final letter to Lawrence from jail, neither of which appeared in *The Gentleman's Magazine*. All of these magazines have been available in microfilm editions for years; likewise the newspapers that followed the affair. *The Morning Chronicle*, 8 March 1777, printed more from the trial than did any other paper, though for general coverage, from the fire through to the execution, there is as much if not more in the *Hampshire Chronicle, The St James Chronicle* and *The Public Advertiser*. All of these newspapers, along with *The London Chronicle*, *The London Evening Post* and *The Morning Post*, can be found at the Colindale branch of the British Library.

The newspapers and magazines reported, second- or third-hand, the Admiralty's reactions to Aitken, and the efforts of the Admiralty, the Navy Board and Commissioner Gambier to find the arsonist. Firsthand accounts can be found in the Portsmouth Dockyard Records and the Sandwich Papers at the National Maritime Museum in Greenwich, and the Admiralty and Navy Board papers at the Public Record Office. A breakdown of the dockyard papers, with some material transcribed, can be found in R. J. B. Knight, *Portsmouth Dockyard Papers, 1774-1783* (Portsmouth: City of Portsmouth, 1987; vol. 6 of the Portsmouth Record Series) and Sandwich's papers are calendared in Sir Edward Warner, *Report on the Correspondence and Papers of John Montagu, 4th Earl of Sandwich* (London: Historical Manuscripts Commission, 1976).

That a few references to Aitken, along with a copy of his confession, turn up in volume 3 of John Fortescue, ed., *The Correspondence of King George III, 1760-1783*, 6 vols (London: Macmillan and Co., 1927-1928) underscores the importance, even unique status, of the 'John the Painter' case. Certainly George III did not follow any other criminal case as closely as he followed this one, nor did the leading members of his ministry - North, Germain, Suffolk, and Sandwich - gather to discuss other cases the way that they did this one. Sadly for the historian, almost all of what they said was never put down on paper or, if it was, it was later discreetly eliminated. Beaumont Hotham did not say anything about the case in his surviving letters. And if John Fielding saved papers that could have been passed down to us, they were lost when his Bow Street office was ransacked during the Gordon riots in June 1780, just a few months before Fielding died. We are therefore left to infer a great deal and are reminded that what Thomas Jefferson once called 'the life and soul' of the past often eludes us.

Had the Portsmouth dockyard fire been more destructive, would James Aitken have escaped the noose and gibbet? A stiff southerly breeze could easily have carried the flames from the ropehouse into the rest of the yard, with catastrophic results. If so, then perhaps Aitken would have gone back to France, satisfied that he had done enough and that to attempt more would have been foolhardy. And what would have been the effect on British policy? Loss of the Portsmouth yard would have complicated naval strategy, but, in and out itself, would not have forced Crown and Parliament to reconsider their war aims. The potential impact on public opinion and the North ministry's determination to carry on the conflict would have been much more important. It is not inconceivable, for example, that complete loss of the Portsmouth yard in early December 1776, coupled with news from America the next month that Washington's army had struck back successfully at Trenton, could have changed attitudes going into the 1777 campaign. Would Burgoyne and Howe have operated in the same ill-coordinated fashion and, if they had - with the military results the same, would the political reaction have been different? As it was, the North ministry staggered but recovered. If the campaign had begun more ambivalently, would the results have been interpreted in a different light, and would the government have begun to lose its will to continue much sooner than it did? Loss of political will was more important in determining the outcome than were military setbacks, as Piers Mackesy has argued so persuasively in *Could the British Have Won the War of Independence?* (Worcester: Clark University Press, 1976) and in his magisterial *The War for America, 1775-1783* (Cambridge: Harvard University Press, 1964).

Posing such questions carries us into the realm of counterfactual history - asking the 'what ifs'. Only in doing that can we begin to appreciate that, for Silas Deane, the risk of sending forth James Aitken to set his fires was worth it. Moreover, Aitken himself cannot be explained away as some deluded pyromaniac. But for a change of wind the man who died a villain might have become a hero, at least to Revolutionary Americans.

BIOGRAPHICAL NOTE AND ACKNOWLEDGEMENTS

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